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BENTHAMIANA.

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Jeremy Bentham

Published April 1, 1843, by W. Tait, Edinburgh.

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BENTHAMIANA:

OR,

SELECT EXTRACTS FROM THE WORKS OF JEREMY BENTHAM.

WITH AN OUTLINE OF HIS OPINIONS ON THE PRINCIPAL SUBJECTS DISCUSSED IN HIS WORKS.

St. Albert's College Library

EDITED BY

JOHN HILL BURTON,
ADVOCATE.

WILLIAM TAIT, EDINBURGH;
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AND JOHN CUMMING, DUBLIN.
MDCCCXLIII.

"Multæ in illo artes, multa præcepta sint, multarum ætatum exempla; sed in unum conspirata. In quibus, si neque ea quæ jam tibi sunt cognita asperneris nec quæ ignota sunt vites, invenies plurima, quæ sit aut voluptati legere, aut cultui legisse, aut usui meminisse."—*Macrobii Saturnalia.*

EDINBURGH:
Printed by WILLIAM TAIT, Prince's Street.

TO

JOHN BOWRING, LL.D., M.P.,

ETC., ETC., ETC.,

BENTHAM'S LITERARY EXECUTOR,

THIS SELECTION OF EXTRACTS

IS DEDICATED

BY THE EDITOR.

INTRODUCTORY NOTICE.

The present may be objected to as a scarcely justifiable use of the termination "Ana," the application of which has generally been confined to anecdotes of the persons whose name is attached to it, or reports of the criticisms and remarks which they have issued in the course of familiar conversation. To those who attribute a strict meaning to the form of expression, the editor will not probably be able to justify himself; but to the more charitable, he takes the liberty of pleading,—that there is no particular class of writing to which the term Ana is uniformly applied,—that in the multitude of volumes to which this popular designation is given, no two are precisely alike in the character of their contents,—that the form of expression, indeed, is one which seems to be used just in those cases where the miscellaneous character of the collection it applies to, forbids the employment of a more formal title; and finally, that from other collections of Ana, extracts from the published works of the person they commemorate are not excluded. The editor of this collection indeed felt, that, in a term admitting of some vagueness and license in its application, he might find a favourable means of conveying a characteristic impression of the nature of the work. It is not a selection of those portions of Bentham's writings which contain the fullest and most valuable expositions of his philosophy. It is not an attempt to convey the essence of his opinions, by selecting the passages in which they are best enunciated, and suppressing those which

are redundant or obscure—an object which those imbued with the popular notion of the prolixity and obscurity of his writings may not unaptly anticipate. It is not even a classified collection of extracts for the purpose of exhibiting a series of illustrations of the author's method of treating the various subjects on which his versatile pen was for sixty years engaged. It would convey an erroneous impression, to say that the nature of the subject, and the justice of the reasoning, have been in no case the motive for selecting a particular passage; but the qualities which the editor has generally sought, have been rather in the method of announcing them, than in the opinions promulgated. It has been remarked by several of the critical writers of the day, whose opinions deserve and receive the highest respect, that among Bentham's writings there are numberless passages, of which the brilliant wit, the lively illustration, the spirited eloquence, and the expressive clearness, are not excelled in the works of any writer of the English language. It was conceived that, among those who support his opinions, as well as among those who are either indifferent or hostile to them, there might be many to whom a selection of those passages in Bentham's works which appear to be chiefly distinguished for merit of a simply rhetorical character, might be considered no unwelcome contribution to the literature of the country. It is often in the midst of long and arduous processes of reasoning, or in the course of elaborate descriptions of minute practical arrangements, demanding from the reader severe thought and unflagging attention, that the most pleasing illustrations of playfulness, or pathos, or epigrammatic expression, are imbedded. He was himself singularly careless in the distribution of these portions of his intellectual riches. His mission he considered, especially in his later years, to be that of an instructor and improver; and the flowers which, equally with more substantial things, were the produce of his vigorous intellect he looked upon as scarcely worthy of passing attention, and deserving of no more notice than to be permitted to grow wherever the more valued objects of his labours left them a little room.

Several of the passages in this selection will naturally be

found to contain pretty ample illustrations of the Author's method of reasoning, and of the conclusions to which he arrived, on many of the subjects which he most prominently discussed. The person who is ambitious, however, of not merely reading portions of Bentham's Works, but of studying his system, would do him injustice by believing that any of his processes of reasoning, even on secondary subjects, can be fully and satisfactorily developed in the passages which follow. It is, moreover, generally in those of his works where there is the smallest proportion of ornamental writing, that the processes of reasoning are the most continuous and conclusive, and the most valuable to the Political and Philosophical student. In this respect, there is a great difference between the author's earlier and his later works. At an early period of his life, he had studied the formation of a pure style with great industry and success. He had a vivid and teeming fancy. He had enriched his mind with a multitudinous reading in every description of work which presented him with illustrations of the operations of the human mind in all ages, and in all parts of the world. He possessed, to an eminent degree, the faculty of arranging and adapting the knowledge thus acquired, to second and assist the operations of abstract reasoning, and to send forth his philosophy to the world, illustrated, and attractively adorned. As he advanced in life, he gradually changed his method; or perhaps it may be said, he allowed the most remarkable feature of his mind —his power of abstract reasoning—to master the others. It seemed to be a feeling which acquired greater force in his mind every day, that the time at his disposal was too valuable to be devoted to the art of pleasing; that there was a vast world of important subjects rising before him, which, even were he to live to the longest duration of the life of man, he could not with his utmost zeal and industry, exhaust; and that it was his duty to look to no other qualities in his style of composition, but those which were most eminently fitted to announce his reasoning with precision and accuracy. On this principle, he constructed a nomenclature for his own use, which

has provoked no small amount of ridicule; but he was enabled to bear the laughter, when he remembered that, by always using the same word for the same thing, he not only abbreviated his own labours, but rendered his meaning more distinct. Much has been said of the intricacy and obscurity of the sentences in his later works. That they are complex is in many instances true; but that they are obscure and dubious, is so much the reverse of the fact, that their complexity arises, in a great measure, from the anxiety with which he guarded them against the possibility of their meaning being mistaken. So anxious is he that the mind should not, even for a passing moment, adopt a different understanding from that which he wishes to impress on it, that he introduces into the body of his sentences, all the limitations, restrictions, and exceptions, which he thinks may apply to the proposition broadly stated. It may be difficult for the mind to trace all the intricate windings of the sentence: still more difficult to have it in all its proportions clearly viewed at one moment; but when this *has* been accomplished, it is at once clear, that all the apparent prolixity arises from the skill with which the author has made provision, that no man shall have a doubt of what he means to say. In the present collection, the passages in which these peculiarities are chiefly developed, have rather been avoided than preferred; but the reader will probably find a sufficient number of specimens to enable him to appreciate their nature and character. It will perhaps serve, in some measure, farther to account for the peculiar aspect of some of Bentham's later works, to explain, that he never prepared any of them for the press. This task he left to others, in the belief that the produce of his labours had intrinsic value, and would, through the assistance of editors, be adapted to the uses of society. Actuated by this feeling, when he had laid out his subject for the day, he laboured continuously on, filling page after page of MS. To the sheets thus filled he gave titles, marginal rubrics, and other facilities for reference: and then he set them aside in his repositories, never touching or seeing them again.

The present is not an occasion for inquiring whether this method fulfilled its author's wishes, and was, what he designed it to be, the most profitable occupation of his time and talents. It must be admitted, however, that whatever compensation it brought in other respects, it lost him readers, and impeded the promulgation of his doctrines. His early works had acquired a popularity with all classes of readers, which would have done much to propitiate favour for a few productions of a less attractive character. It happened, however, that works of the latter class crowded one upon another, until they became accumulated into a mass which overwhelmed and hid from the present generation the few early works which had given instruction and delight to the eighteenth century. Men gradually learned to speak of Bentham as an unreadable author—a character which received countenance from writers who had, in their own persons, acknowledged the sterling value of his works, by plundering and adopting many of his precious thoughts. It is, indeed, in these less-adorned works, that the most valuable of Bentham's exposures of existing fallacies, and projects of practical amendment are to be found; and to the reader who is ambitious of mastering the great truths they contain, it can only be said, that there is no royal road to this department of knowledge, and that to acquire it, he must submit to the labour of steady and continuous study. Although the student who wishes to be master of Bentham's opinions should neither be content with extracts nor abridgments, but should go to his own works, it has been considered that an outline of the Utilitarian Philosopher's system might be a useful accompaniment to the present collection, as supplying a sort of thread on which the various passages may be strung, and in some measure arranged, so as to prevent them from appearing so utterly disconnected as they would otherwise be. It may be mentioned, that no attempt has been made to reduce them to a systematic arrangement, and that they have no farther connexion with each other than that kind of association which usually links together the subjects of familiar conversation.

Before concluding this notice, an outline of Bentham's life may

not be unacceptable : it will, of course, be merely an adaptation of dates, and other leading circumstances, from the Memoir by Dr Bowring, attached to the collected edition of the works.

Jeremy Bentham was born on the 15th February, 1748, in Red Lion Street, Houndsditch, London. His father, whose name was Jeremiah, was an active member of the Scriveners' Company, and possessed a very considerable fortune, partly patrimonial, and partly the fruit of his own industry. He was a man of shrewd, ambitious character, who had successfully followed the minor paths to station and wealth. His first wife, the mother of the Philosopher, was named Alicia Grove. She was the daughter of a shopkeeper in Andover, who had, however, family connexions of a much higher grade. If it be from his father that Bentham derived his energy and practical sagacity, we may look to his mother as the source of the finer qualities of his intellect and heart. There are many illustrations of her character in the memoirs of her son, which show that she had warm affections, and a refined and cultivated mind.

Much of Bentham's childhood was spent at Browning Hill and Barking, two country seats belonging to his relations. His impressions of the felicity which attended his residence in these retreats, was strong to the end of his life ; and adds another to the many instances which seem to show, that every man of high intellectual attainments has an innate love of nature, and a desire to be among fresh waters and green trees. In each of these country-houses he was allowed to rummage through a library of miscellaneous books—the ordinary travels, histories, and theological works of the age. They were not selected books, and they had not been set in his way as sources of instruction ; but he was, from the time when he began to read, a voracious devourer of literary information ; and the works which he had thus an opportunity of studying, produced vivid impressions on his mind, and left recollections which attended him in all his after years. In these collections, Locke on the Understanding, Clarendon's History, Kämpfer's Japan, and Clarke on the Trinity, stood beside Clarissa Harlow, and Puss

in Boots, and were all alike welcome to his young and vigorous literary appetite. His chief delight, however, was in the perusal of Rapin's England, from which he stored his mind with facts which, from his very early acquisition of them, came clearly and readily to his memory in after life. It was a circumstance remembered by his father, who loved to cherish up every incident connected with the development of his youthful powers, that when he was a child in petticoats, walking out with Mr and Mrs Bentham, being tired of the conversation, he ran home, and, having ordered the servant to light candles, and place a desk for him, was found mounted on the table, deeply absorbed in the folio edition of Rapin.

In Bentham the power of acquiring facts and languages was very early developed; and he is one of the few instances of precocious boys, whose more mature talents have not been warped or stunted by their being too early forced into growth. It was rather, indeed, a circumstance of incidental good fortune than a presage of his after greatness, that the boy should be fond of reading, and ready in acquiring Greek, French, and Latin; for, in advanced life, he had a strong disinclination to withdraw any of his time from the tasks of thinking and composing; and thus the stock of knowledge which he had laid up in youth, was of eminent service to him. Latin verses have been preserved which he wrote at eight years of age, and Greek which he wrote at twelve. At the latter age he composed a Latin ode on the death of George II. and the accession of George III., which elicited some commendation from Johnson. This effort, and the subject of it, were both characteristic of the early state of Bentham's mind, which was filled with a serious and almost devout admiration of everything that was hallowed by rank and antiquity. He tells us that the stately eloquence of Clarendon's History, and the solemn services of the Church of England, had early imbued him with a deep veneration for all things connected with Royalty and the Church Establishment. The founder of the Utilitarian Philosophy, and of the Radical party in politics, thus entered life as a zealous supporter of

Church and King. He was an admirer of Mansfield, and an ardent partisan of the court in the disputes with Wilkes.

In 1755, Bentham was sent to Westminster School; and in 1760, in his thirteenth year, he was entered a Commoner of Queen's College, Oxford. In 1763 he took the degree of Bachelor of Arts. In the same year he took his place as a student of the Court of King's Bench, and was in due course called to the bar. Bentham's father was an ambitious man. He saw the preëminent powers of his son, and he showed no little penetration in judging, that for a mind so inquiring and argumentative, the law was the most promising field. He looked forward through a vista of future greatness, and expected, before he laid his head in the dust, to see his son Jeremy with the Great Seal in his hand—but his expectations were disappointed. Old Bentham had, in 1765, married Mrs Abbot, a clergyman's widow. She had a son—very nearly a contemporary of Jeremy—and it was natural that these two should be started against each other in the race of ambition. It was to the deep mortification of old Bentham that Charles Abbot, bending the whole of his genius and industry to professional and political aggrandizement, rose step by step till he became Speaker of the House of Commons, and was called to the House of Peers; while his dreamy contemporary, with an European reputation, was no more in the eyes of the worldly old man than the obscure son of an obscure attorney. When he had accomplished his first professional efforts at the bar, Bentham began to feel a disgust of the profession; and neither his affection for his parent, nor his naturally active and enterprising spirit, could induce him to make farther exertions in that direction. It was in the solitary hours of reflection, not unmixed, perhaps, with regret, which filled up some years of this period of his life, that he seems to have imagined and designed his great project, of attempting to subject to the calm and fixed rules of inductive investigation, those departments of human thought and action, where men's passions are most violently excited, and their prejudices most obdurate.

The year 1776 was an important epoch in his life. He then

published the "Fragment on Government," a philosophical criticism on the Principles of Government expounded in Blackstone's Commentary. Passages from it will be found in this collection, (p. 212, and p. 216.) The originality of the thoughts, and the beauty of the language, at once attracted the general attention of reading men to this work. People wondered who could be its author; and they looked to the leading politicians and thinkers of the age—to Burke, Dunning, and even Mansfield. It was some alleviation to the parent's chagrin, to find that his son had done something to merit the admiration of the wealthy and the powerful; and though he had promised to keep the authorship secret, he could not help letting it transpire. The publisher soon discovered that the old gentleman should have held his peace—at least for a time; for when it became known that the book was written by an obscure youth who had been unsuccessful at the bar, the rapid sale of copies suddenly stopped. The Fragment was soon followed by the more important work, called, "An Introduction to the Principles of Morals and Legislation." It is printed at the commencement of the collected edition of the works; and the extracts from it in the following collection will readily be recognised. This work attracted the attention of the then head of the cabinet, Lord Shelburne, afterwards Marquis of Lansdowne, who called upon the author, and commenced with him a friendship which lasted to the end of the marquis's life. The union of these two men, so differently situated in respect of rank, was perfectly disinterested. Though the one presided at the distribution of honours and rewards, the other wanted nothing at his hands; and when the Peer retired a fallen minister, the young philosopher was the cheerful and respected companion of his leisure. Bentham paid the first of a series of visits to Lord Lansdowne's country mansion at Bowood in 1781. He there met with a crowd of the great men of the age—with William Pitt, Camden, Barré, Dunning, and young Beckford. It was there that he first became acquainted with two young men who were afterwards to be distinguished promulgators of his doctrines, Dumont and

Romilly; and his visit was the foundation of many lasting friendships. There was, however, another attachment which he formed at Bowood, to which this term will not apply. He fell in love with a young lady of finely-cultivated intellect, no less remarkable for the high qualities of her heart, than those of her mind. She was a daughter of a noble and distinguished house. She was much younger than the philosopher, and there were many reasons which would have prevented the union from being an expedient one; and so Bentham seems to have at first felt it. He carried on a playful correspondence with the young lady, and with some of her companions, a few specimens of which will be found at the end of this collection. There is a sort of plaintive and affectionate pleasantry in these productions, which might be supposed to indicate a Platonic attachment. But the memory of the scenes of Bowood haunted him; and, in after years, meeting again with the object of his attention, and thinking that time and circumstances had somewhat smoothed down the inequalities of their relative position, he made her a proffer of marriage. This occurred in 1805, when Bentham was fifty-six years old. The consequence was a rejection; but it was expressed in a letter full of kind feeling and good wishes, which tended to soften the bitterness of the disappointment.

Between the years 1785 and 1787, Bentham made a tour through France, the Mediterranean, and Turkey, to Crichoff in Russia, where his brother Sir Samuel Bentham, a distinguished mechanical inventor, superintended the establishment of Prince Potemkin. It was while living in retirement in Russia that he composed one of the most pleasingly-written and conclusively-reasoned of his minor works—the Defence of Usury. There, too, taking the mechanical genius of his brother to the assistance of his own philosophical inquiries regarding the principles of punishment, he framed the plan of prison discipline, of which he published an account under the title of "The Panopticon." A notice of the leading principles of this plan will be found in the outline appended to this collection, (see p. 388.) It attracted the notice of many of the

statesmen of the age; and Pitt, who had a mind fully capable of appreciating and supporting any plan for social amelioration which did not interfere with his ambitious projects, resolved to give it a practical trial. In 1789, Bentham had written a series of Letters in the *Public Advertiser*, which he signed "Anti-Machiavel." They were directed against an attempt by the British Cabinet to break up the alliance between Russia and Denmark. After the publication of the second letter, a brief defence of the Cabinet made its appearance in the same paper, signed "Partizan." Bentham had never much inclination to retire before an argumentative foe; and he wrote a rejoinder, pretty sharp and sarcastic. He was soon afterwards informed by Lord Lansdowne that George III. was himself the author of the letter of Partizan, and knew who was his opponent. His majesty was not remarkable either for forgetting or forgiving; and when a contract with Bentham had been adopted by Parliament, and passed into an act—when the fixing of a site was all that was wanted to complete the preparation for building the structure—when a site was chosen, and the sign-manual alone was wanting to complete the transference of the land, and the king refused his signature—it seemed not without some chance of being correct, that the author of the Panopticon attributed to "the best of kings" a desire to mortify his controversial opponent, at the sacrifice of the proper administration of justice. The history of Bentham's efforts to get a hearing for his Panopticon Plan, is a sad record of hopes often raised, to be as often overthrown. He was fully imbued with the better order of ambition—that which longs for a lasting commemoration among mankind, as a benefactor to the species; and he felt many a keen pang of disappointment, when selfishness, or petty spite, or utter carelessness of the public good, or pig-headed obstinate stupidity, baffled this his favourite project of practical benevolence. The Panopticon controversy haunted him, in one shape or other, for thirty years. At one time his whole fortune lay expended in the preparations for putting it in execution. At length, in 1811, his final hopes were extinguished by the Report of a Select

Committee, which recommended that the project should be abandoned, and that its author should receive compensation. In 1813 he received, on the award of arbiters mutually chosen, £30,000 as compensation for his losses.

Bentham's Plan of Pauper Management, of which a notice will be found in the Outline, (p. 390,) was one which he likewise wished personally to superintend; and he attributed its defeat, after it had received the sanction of Pitt, to the same hand which had stopped his Plan of Prison Discipline. In the meantime, Bentham had conceived the desire, about the year 1790, of entering parliament, under the auspices of Lord Lansdowne. This wish was of short duration: his lordship had many reasons for not being able to comply with it at the time when it was expressed; and Bentham felt that he had other, and, to a mind like his, more important contests to undertake, than those of a partisan champion in the House of Commons.

Bentham was in the prime of life, and in the full blaze of a reputation which had spread to all the civilized portions of the earth, when the French Revolution burst forth. He was in correspondence with Brissot, and other members of the Girondist party; but he formed a limited opinion of their sagacity, and of the rationality of their doctrines; and frequently represented, that projects which were not firmly based in utility, could afford no satisfactory substitute, for established institutions however defective. He feared the worst results from the spirit which he then saw abroad, and resolved to make at least one great effort in favour of government and order, by preparing a critical examination of The French Declaration of Rights.* In 1792, he was made a citizen of France, and he took that occasion to administer a dignified rebuke to those whom he considered the most dangerous foes of rational freedom.

It was about the commencement of the nineteenth century, that Bentham began to exhibit a transition towards that marked change in his style which has been already noticed. At the same time, too, he seems to have begun the rigid system of

* See a further account of this work in the Outline, p. 368. See extracts from it, p. 60.

close retirement which rendered him one of the most unapproachable men of his day. "There was never a man," says Dr Bowring, "so desirous of shunning others, unless some strong sense of duty, or prospect of usefulness, subdued his natural tendency to seclusion. . . . . Once, when Madame de Staël called on him, expressing an earnest desire for an audience, he sent to tell her, that he certainly had nothing to say to her, and he could not see the necessity of an interview, for anything she had to say to him. On an occasion when Mr Edgeworth, in his somewhat pompous manner, called and delivered the following message to the servant, in order to be communicated to Bentham: 'Tell Mr Bentham, that Mr Richard Lovell Edgeworth desires to see him,'—he answered: 'Tell Mr Richard Lovell Edgeworth, that Mr Bentham does not desire to see *him*.'"

In this retirement—partly spent in the country, and partly at his "hermitage," as he aptly termed it, in Queen Square Place Westminster, besides writing the mass of MSS. of which the collected edition of his works exhibits, after all, but a portion,* he carried on an unwearied correspondence with all public men whose influence he thought there was any chance of his being able to direct in favour of projects for the public good. His retired habits of life appear to have, in the end, imbued him with a simplicity and candour of mind, which made him act as if men in power only wanted to know what was right that they might do it, and induced him to give a literal belief to all their protestations. He thus became a most formidable and oppressive correspondent to the common class of party statesmen. When he had extracted from any one of them the ordinary expression of a desire to serve the public, he set about, with a most provoking clearness, to show the precise way in which the service could be accomplished; and it generally happened, that in the end, after being hunted

* Although the collected edition of Bentham is one of the largest series of works which has issued from any one author, it does not contain nearly the whole of the MS. matter he left behind him. The whole will, however, be, as far as possible, devoted to the use of the public, by being deposited in the British Museum.

from one polite subterfuge to another, the time-server was landed in some flat refusal to perform the service he had professed to have at heart, and had his inconsistency thrown in his teeth. The vanity of which Bentham has, not without an appearance of justice, been accused, arose out of a like simplicity. Whatever was said in his praise, he believed to be sincerely said by the speaker, and he set about immediately to weigh the influence it might have, as a testimonial of ability, to be of service to mankind. In this spirit he would collect together and publish heaps of testimonials in his favour as a manufacturer of laws, exposing them to the public gaze in a manner which elicited much ridicule from those whose vanity is of a more cautious and selfish cast. It was, undoubtedly, a subject of self-gratulation to one who had, with so much purity of intention and resolute energy, pursued the object of human amelioration, to find that, in some quarters at least, his exertions were appreciated; but he disdained all recourse to the usual arts for feeding his love of approbation. He would submit to no popular parade of his person, though many were the efforts made to obtain his personal auspices for political objects; and he never condescended to return a word of flattery as payment for the praises heaped on him by others.

Bentham's acquaintance with Dr Bowring, to whom he confided the duty of transmitting his writings to posterity, commenced in 1820. In 1823, the *Westminster Review* was established; the funds were furnished by Bentham; and the editorial duties, at first divided between Dr Bowring and Mr Southern, were afterwards performed by Dr Bowring. They came, at a later period, into the hands of Colonel Perronet Thompson, who, possessing many other claims to notice, has been perhaps the most animated and eloquent of the promulgators of the Utilitarian Philosophy. In these his latter days, Bentham had seen the end of all the men of note with whom his early career was associated, and he moved among the ornaments of a new generation. The history of the first forty years of his life is connected with the names of Shelburne, Camden,

Adam Smith, Hastings, Wilkes, Dunning, Pitt, and Mirabeau; while the latter portion of his career is associated with those of Cartwright, Brougham, Burdett, Horner, Mill, Mackintosh, Hobhouse, O'Connell, Sydney Smith, Mina, and Rammohun Roy. He had lived to see the adoption of many of his at first least popular opinions; and he died at a time when political events had given a powerful impetus to the progress of his political doctrines. His death took place on the 6th of June, 1832.

It has not been thought expedient to load the following extracts with a reference to the particular work or pamphlet from which each of them is taken. The volume and pages, however, in which it may be found in the collected edition of Bentham's works, is appended to each passage; and as the reader may occasionally feel a curiosity to know in which of the Author's works some of the passages first appeared, there follows a list of the works *seriatim*, with a statement of the volumes and pages which they respectively occupy in the collected edition.

VOLUME I.

Pages	
1–154	Principles of Morals and Legislation.
155–168	Essay on the Promulgation of Laws.
169–194	Influence of Time and Place in matters of Legislation.
195–219	Table of the Springs of Action.
221–295	Fragment on Government.
297–358	Principles of the Civil Code.
358–364	The Levelling System.
365–580	Principles of Penal Law.

VOLUME II.

1–183	Principles of Judicial Procedure.
189–266	Rationale of Reward.
267–274	Leading Principles of the Constitutional Code.
276–297	Letters on the Liberty of the Press and Public Discussion.
299–373	Essay on Political Tactics.
375–487	The Book of Fallacies.
489–534	Anarchical Fallacies.
535–560	Principles of International Law.

Pages
561–571 Junctiana Proposal, for a junction of the Atlantic and Pacific.
573–583 Protest against Law Taxes.
585–598 Supply without Burden, or Escheat *vice* Taxation.
599–600 Tax with Monopoly.

VOLUME III.

1–29 Defence of Usury.
31–84 Manual of Political Economy.
85–103 Observations on the Restrictive and Prohibitory Commercial System.
105–153 Plan for the Conversion of Stock into Note Annuities.
155–210 General View of a Complete Code of Laws.
211–230 Pannomial Fragments.
231–283 Nomography, or the Art of Inditing Laws.
285–295 Logical Arrangements, or instruments of Invention and Discovery.
297–431 Equity Dispatch Court Proposal and Bill.
433–557 Plan of Parliamentary Reform in the Form of a Catechism.
558–597 Radical Reform Bill.
599–622 Radicalism not dangerous.

VOLUME IV.

1–35 View of The Hard Labour Bill.
37–172 Panopticon; or The Inspection House, (a System of Prison Discipline.)
173–248 Panopticon *versus* New South Wales.
249–284 A Plea for The Constitution.
285–406 Draught of a Code for The Organization of the Judicial Establishment in France.
407–418 Emancipate your Colonies.
419–450 On Houses of Peers and Senates.
451–533 Papers relative to Codification and Public Instruction.
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VOLUME V.

1–53 Scotch Reform—(Administration of Justice in Scotland.)
55–60 Plan of a Judicatory to be called The Court of Lords' Delegates.
61–186 The Art of Packing Special Juries.
187–229 Swear not at all.
231–237 Truth *versus* Ashhurst—or Law as it is, contrasted with what it is said to be.
239–261 Remarks on the Indictments in "The King against Edmonds," &c., and "The King against Wolseley and Harrison."
263–386 Official Aptitude Maximized—Expense Minimized, (a collection of Tracts.)

Pages
387–416 Commentary on Mr. Humphery's Real Property Code.
417–435 Outline of a Plan of a General Register of Real Property.
437–548 Justice and Codification Petitions.
549–612 Lord Brougham displayed.

VOLUME VI. and VII.

The Rationale of Evidence.

VOLUME VIII.

1–191 Chrestomathia, (a collection of papers illustrative of a proposed system of education, containing Essays on Nomenclature and Classification, on Geometry and Algebra, &c.)
192–211 Fragment on Ontology.
213–293 Essay on Logic.
295–338 Essay on Language.
339–357 Fragments on Universal Grammar.
359–461 Tracts on Poor Laws and Pauper Management.
463–486 Three Tracts on Spanish and Portuguese affairs.
487–554 Letters to Count Toreno on The Proposed Spanish Penal Code.
555–600 Securities against Misrule, adapted to a Mahommedan State.

VOLUME IX.

The Constitutional Code.

VOLUME X. and XI.

Memoirs and Correspondence.

BENTHAMIANA.

VARIOUS STANDARDS OF RIGHT AND WRONG.

The various systems that have been formed concerning the standard of right and wrong, may all be reduced to the principle of sympathy and antipathy. One account may serve for all of them. They consist, all of them, in so many contrivances for avoiding the obligation of appealing to any external standard, and for prevailing upon the reader to accept of the author's sentiment or opinion as a reason, and that a sufficient one, for itself—the phrases different, but the principle the same.

It is curious enough to observe the variety of inventions men have hit upon, and the variety of phrases they have brought forward, in order to conceal from the world, and, if possible, from themselves, this very general, and therefore very pardonable self-sufficiency.

1. One man says, he has a thing made on purpose to tell him what is right and what is wrong; and that it is called a *moral sense:* and then he goes to work at his ease, and says, such a thing is right, and such a thing is wrong—why? "because my moral sense tells me it is."

2. Another man comes and alters the phrase: leaving out *moral*, and putting in *common* in the room of it. He then tells you, that his common sense teaches him what is right and wrong, as surely as the other's moral sense did: meaning by common sense, a sense of some kind or other, which, he says, is possessed by all mankind: the sense of those, whose sense is not the same as the author's, being struck out of the account as not worth taking. This contrivance does better than the other; for a moral sense being a new thing, a man may feel about him a good

while without being able to find it out: but common sense is as old as the creation; and there is no man but would be ashamed to be thought not to have as much of it as his neighbours. It has another great advantage: by appearing to share power, it lessens envy: for when a man gets up upon this ground, in order to anathematize those who differ from him, it is not by a *sic volo sic jubeo*, but by a *velitis jubeatis*.

3. Another man comes, and says, that as to a moral sense, indeed, he cannot find that he has any such thing: that, however, he has an *understanding*, which will do quite as well. This understanding, he says, is the standard of right and wrong: it tells him so and so. All good and wise men understand as he does: if other men's understandings differ in any point from his, so much the worse for them: it is a sure sign they are either defective or corrupt.

4. Another man says, that there is an eternal and immutable Rule of Right: that that rule of right dictates so and so: and then he begins giving you his sentiments upon anything that comes uppermost: and these sentiments (you are to take for granted, are so many branches of the eternal rule of right.

5. Another man, or perhaps the same man (it's no matter) says, that there are certain practices conformable, and others repugnant, to the Fitness of Things; and then he tells you, at his leisure, what practices are conformable and what repugnant: just as he happens to like a practice or dislike it.

6. A great multitude of people are continually talking of the Law of Nature; and then they go on giving you their sentiments about what is right and what is wrong: and these sentiments, you are to understand, are so many chapters and sections of the Law of Nature.

7. Instead of the phrase, Law of Nature, you have sometimes Law of Reason, Right Reason, Natural Justice, Natural Equity, Good Order. Any of them will do equally well. This latter is most used in politics. The three last are much more tolerable than the others, because they do not very explicitly claim to be anything more than phrases: they insist but feebly upon the being looked upon as so many positive standards of themselves, and seem content to be taken, upon occasion, for phrases expressive of the conformity of the thing in question to the proper standard, whatever that may be. On most occasions, however, it will be better to say *utility*: *utility* is clearer, as referring more explicitly to pain and pleasure.

8. We have one philosopher, who says, there is no harm in

anything in the world but in telling a lie: and that if, for example, you were to murder your own father, this would only be a particular way of saying he was not your father.* Of course, when this philosopher sees anything that he does not like, he says it is a particular way of telling a lie;—it is saying that the act ought to be done, or may be done, when, *in truth*, it ought not to be done.

9. The fairest and openest of them all is that sort of man who speaks out, and says I am of the number of the Elect: now God himself takes care to inform the Elect what is right: and that with so good effect, that let them strive ever so much, they cannot help not only knowing it but practising it. If, therefore, a man wants to know what is right and what is wrong, he has nothing to do but to come to me.

It is upon the principle of antipathy that such and such acts are often reprobated on the score of their being *unnatural*: the practice of exposing children, established among the Greeks and Romans, was an unnatural practice. Unnatural, when it means anything, means unfrequent: and there it means something; although nothing to the present purpose. But here it means no such thing: for the frequency of such acts is perhaps the great complaint. It therefore means nothing; nothing, I mean, which there is in the act itself. All it can serve to express is, the disposition of the person who is talking of it: the disposition he is in to be angry at the thoughts of it. Does it merit his anger? Very likely it may: but whether it does or not is a question, which, to be answered rightly, can only be answered upon the principle of utility.

Unnatural, is as good a word as moral sense, or common sense; and would be as good a foundation for a system. Such an act is unnatural; that is, repugnant to nature: for I do not like to practise it; and, consequently, do not practise it. It is therefore repugnant to what ought to be the nature of everybody else.

The mischief common to all these ways of thinking and arguing (which, in truth, as we have seen, are but one and the same method, couched in different forms of words) is their serving as a cloak, and pretence, and aliment, to despotism: if not a despotism in practice, a despotism, however, in disposition: which is but too apt, when pretence and power offer, to show itself in practice. The consequence is, that with intentions very commonly of the

* See "The Religion of Nature Delineated." 4to. London, 1724. By William Woolaston.

purest kind, a man becomes a torment either to himself or his fellow-creatures. If he be of the melancholy cast, he sits in silent grief, bewailing their blindness and depravity : if of the irascible, he declaims with fury and virulence against all who differ from him ; blowing up the coals of fanaticism, and branding, with the charge of corruption and insincerity, every man who does not think, or profess to think, as he does.

If such a man happens to possess the advantages of style, his book may do a considerable deal of mischief before the nothingness of it is understood.

These principles, if such they can be called, it is more frequent to see applied to morals than to politics : but their influence extends itself to both. In politics, as well as morals, a man will be at least equally glad of a pretence for deciding any question in the manner that best pleases him, without the trouble of inquiry. If a man is an infallible judge of what is right and wrong in the actions of private individuals, why not in the measures to be observed by public men in the direction of those actions? accordingly, (not to mention other chimeras,) I have more than once known the pretended law of nature set up in legislative debates, in opposition to arguments derived from the principle of utility.

"But is it never, then, from any other considerations than those of utility, that we derive our notions of right and wrong?" I do not know : I do not care. Whether a moral sentiment can be originally conceived from any other source than a view of utility, is one question : whether upon examination and reflection it can, in point of fact, be actually persisted in and justified on any other ground, by a person reflecting within himself, is another : whether in point of right it can properly be justified on any other ground, by a person addressing himself to the community, is a third. The two first are questions of speculation : it matters not, comparatively speaking, how they are decided. The last is a question of practice : the decision of it is of as much importance as that of any can be.

"I feel in myself," say you, "a disposition to approve of such or such an action in a moral view : but this is not owing to any notions I have of its being a useful one to the community. I do not pretend to know whether it be an useful one or not : it may be, for aught I know, a mischievous one." 'But is it then,' say I, 'a mischievous one? Examine ; and if you can make yourself sensible that it is so, then, if duty means anything,—that is, moral duty,—it is your *duty* at least to abstain from it : and more than that,—if it is what lies in your power, and can be done without-

too great a sacrifice,—to endeavour to prevent it. It is not your cherishing the notion of it in your bosom, and giving it the name of virtue, that will excuse you.'

"I feel in myself," say you again, "a disposition to detest such or such an action in a moral view; but this is not owing to any notions I have of its being a mischievous one to the community. I do not pretend to know whether it be a mischievous one or not: it may be not a mischievous one: it may be, for aught I know, a useful one."—'May it indeed,' say I, 'a useful one?' But let me tell you then, that unless duty, and right and wrong, be just what you please to make them, if it really be not a mischievous one, and anybody has a mind to do it, it is no duty of yours, but on the contrary it would be very wrong in you, to take upon you to prevent him: detest it within yourself as much as you please; that may be a very good reason (unless it be also a useful one) for your not doing it yourself: but if you go about, by word or deed, to do anything to hinder him, or make him suffer for it, it is you, and not he, that have done wrong; it is not your setting yourself to blame his conduct, or branding it with the name of vice, that will make him culpable, or you blameless. Therefore, if you can make yourself content that he shall be of one mind, and you of another, about that matter, and so continue, it is well: but if nothing will serve you, but that you and he must needs be of the same mind, I'll tell you what you have to do: it is for you to get the better of your antipathy, not for him to truckle to it.'—i. 8-10.

AN OPPONENT OF THE PRINCIPLE OF UTILITY.

If he thinks the settling of his opinions on such a subject worth the trouble, let him take the following steps, and at length, perhaps, he may come to reconcile himself to it.

1. Let him settle with himself whether he would wish to discard this principle altogether; if so, let him consider what it is that all his reasonings (in matters of politics especially) can amount to?

2. If he would, let him settle with himself, whether he would judge and act without any principle, or whether there is any other he would judge and act by?

3. If there be, let him examine and satisfy himself whether the principle he thinks he has found is really any separate intelligible principle; or whether it be not a mere principle in words, a kind

of phrase, which at bottom expresses neither more nor less than the mere averment of his own unfounded sentiments; that is, what in another person he might be apt to call caprice?

4. If he is inclined to think that his own approbation or disapprobation, annexed to the idea of an act, without any regard to its consequences, is a sufficient foundation for him to judge and act upon, let him ask himself whether his sentiment is to be a standard of right and wrong, with respect to every other man, or whether every man's sentiment has the same privilege of being a standard to itself?

5. In the first case, let him ask himself whether his principle is not despotical, and hostile to all the rest of the human race?

6. In the second case, whether it is not anarchical, and whether at this rate there are not as many different standards of right and wrong as there are men? and whether, even to the same man, the same thing, which is right to-day, may not (without the least change in its nature) be wrong to-morrow? and whether the same thing is not right and wrong in the same place at the same time? and in either case, whether all argument is not at an end? and whether, when two men have said, "I like this," and "I don't like it," they can (upon such a principle) have anything more to say?

7. If he should have said to himself, No: for that the sentiment which he proposes as a standard must be grounded on reflection, let him say on what particulars the reflection is to turn: if on particulars having relation to the utility of the act, then let him say whether this is not deserting his own principle, and borrowing assistance from that very one in opposition to which he sets it up: or if not on those particulars, on what other particulars?

8. If he should be for compounding the matter, and adopting his own principle in part, and the principle of utility in part, let him say how far he will adopt it?

9. When he has settled with himself where he will stop, then let him ask himself how he justifies to himself the adopting it so far? and why he will not adopt it any farther?

10. Admitting any other principle than the principle of utility to be a right principle, a principle that it is right for a man to pursue,—admitting (what is not true) that the word *right* can have a meaning without reference to utility, let him say whether there is any such thing as a *motive* that a man can have to pursue the dictates of it: if there is, let him say what that motive is, and how it is to be distinguished from those which enforce the dictates

of utility: if not, then lastly let him say what it is this other principle can be good for?—i. 3–4.

RELIGIOUS INTOLERANCE.

The reasoning, in this case, is of the following stamp. There are certain errors, in matters of belief, to which all mankind are prone: and for these errors in judgment, it is the determination of a Being of infinite benevolence, to punish them with an infinity of torments. But from these errors the legislator himself is necessarily free: for the men who happen to be at hand for him to consult with, being men perfectly enlightened, unfettered, and unbiassed, have such advantages over all the rest of the world, that when they sit down to inquire out the truth relative to points so plain and so familiar as those in question, they cannot fail to find it. This being the case, when the sovereign sees his people ready to plunge headlong into an abyss of fire, shall he not stretch out a hand to save them? Such, for example, seems to have been the train of reasoning, and such the motives, which led Lewis the XIVth into those coercive measures which he took for the conversion of heretics, and the confirmation of true believers. The ground-work, pure sympathy and loving-kindness: the superstructure, all the miseries which the most determined malevolence could have devised.—i. 147.

ELEMENTS OF HUMAN DISPOSITIONS.

1.

It is with disposition as with everything else: it will be good or bad according to its effects; according to the effects it has in augmenting or diminishing the happiness of the community. A man's disposition may accordingly be considered in two points of view: according to the influence it has, either, 1. On his own happiness; or, 2. On the happiness of others. Viewed in both these lights together, or in either of them indiscriminately, it may be termed, on the one hand, good; on the other, bad; or, in flagrant cases, depraved. Viewed in the former of these lights, it has scarcely any peculiar name which has as yet been appropriated to it. It might be termed, though but inexpressively, frail or infirm, on the one hand; sound or firm, on the other. Viewed in the other light, it might be termed beneficent or meri-

torious on the one hand: pernicious or mischievous on the other. Now of that branch of a man's disposition, the effects of which regard in the first instance only himself, there needs not much to be said here. To reform it when bad, is the business rather of the moralist than the legislator: nor is it susceptible of those various modifications which make so material a difference in the effects of the other. Again, with respect to that part of it, the effects whereof regard others in the first instance, it is only in as far as it is of a mischievous nature that the penal branch of law has any immediate concern with it: in as far as it may be of a beneficent nature, it belongs to a hitherto but little cultivated, and as yet unnamed branch of law, which might be styled the remuneratory.

2.

A man, then, is said to be of a mischievous disposition, when, by the influence of no matter what motives, he is *presumed* to be more apt to engage, or form intentions of engaging, in acts which are *apparently* of a pernicious tendency, than in such as are apparently of a beneficial tendency: of a meritorious or beneficent disposition, in the opposite case.

3.

I say presumed: for, by the supposition, all that appears is one single action, attended with one single train of circumstances: but from that degree of consistency and uniformity which experience has shown to be observable in the different actions of the same person, the probable existence (past or future) of a number of acts of a similar nature is naturally and justly inferred from the observation of one single one. Under such circumstances, such as the motive proves to be in one instance, such is the disposition to be presumed to be in others.

4.

I say *apparently* mischievous; that is, apparently with regard to him; such as to him appear to possess that tendency: for from the mere event, independent of what to him it appears beforehand likely to be, nothing can be inferred on either side. If to him it appears likely to be mischievous, in such case, though in the upshot it should prove innocent, or even beneficial, it makes no difference; there is not the less reason for presuming his disposition to be a bad one: if to him it appears likely to be beneficial or innocent, in such case, though in the upshot it should prove pernicious, there is not the more reason on that ac-

count for presuming his disposition to be a good one. And here we see the importance of the circumstances of intentionality, consciousness, unconsciousness, and mis-supposal.

5.

The truth of these positions depends upon two others, both of them sufficiently verified by experience: The one is, that in the ordinary course of things the consequences of actions commonly turn out conformable to intentions. A man who sets up a butcher's shop, and deals in beef, when he intends to knock down an ox, commonly does knock down an ox; though by some unlucky accident he may chance to miss his blow and knock down a man: he who sets up a grocer's shop, and deals in sugar, when he intends to sell sugar, commonly does sell sugar; though by some unlucky accident he may chance to sell arsenic in the room of it.

6.

The other is, that a man who entertains intentions of doing mischief at one time is apt to entertain the like intentions at another. *

7.

There are two circumstances upon which the nature of the disposition, as indicated by any act, is liable to depend: 1. The apparent tendency of the act: 2. The nature of the motive which gave birth to it. This dependency is subject to different rules, according to the nature of the motive. In stating them, I suppose all along the apparent tendency of the act to be, as it commonly is, the same as the real.

8.

Where the tendency of the act is *good*, and the motive is of the *self-regarding* kind. In this case, the motive affords no inference on either side. It affords no indication of a good disposition: but neither does it afford any indication of a bad one.

A baker sells his bread to a hungry man who asks for it. This, we see, is one of those acts of which, in ordinary cases, the

* To suppose a man to be of a good disposition, and at the same time likely, in virtue of that very disposition, to engage in an habitual train of mischievous actions, is a contradiction in terms: nor could such a proposition ever be advanced, but from the giving, to the thing which the word disposition is put for, a reality which does *not* belong to it. If, then, for example, a man of religious disposition should, in virtue of that very disposition, be in the habit of doing mischief, for instance, by persecuting his neighbours, the case must be, either that his disposition, though good in certain respects, is not good upon the whole; or that a religious disposition is not in general a good one.

tendency is unquestionably good. The baker's motive is the ordinary commercial motive of pecuniary interest. It is plain, that there is nothing in the transaction, thus stated, that can afford the least ground for presuming that the baker is a better or a worse man than any of his neighbours.

9.

Where the tendency of the act is *bad*, and the motive, as before, is of the *self-regarding* kind. In this case, the disposition indicated is a mischievous one.

A man steals bread out of a baker's shop: this is one of those acts of which the tendency will readily be acknowledged to be bad. Why, and in what respects it is so, will be stated farther on. His motive, we will say, is that of pecuniary interest; the desire of getting the value of the bread for nothing. His disposition, accordingly, appears to be a bad one: for every one will allow a thievish disposition to be a bad one.

10.

Where the tendency of the act is *good*, and the motive is the purely social one of *good-will*. In this case the disposition indicated is a beneficent one.

A baker gives a poor man a loaf of bread. His motive is compassion; a name given to the motive of benevolence, in particular cases of its operation. The disposition indicated by the baker, in this case, is such as every man will be ready enough to acknowledge to be a good one.

11.

Where the tendency of the act is *bad*, and the motive is the purely social one of good-will. Even in this case, the disposition which the motive indicates is dubious: it may be a mischievous or a meritorious one, as it happens; according as the mischievousness of the act is more or less apparent.

12.

It may be thought, that a case of this sort cannot exist; and that to suppose it, is a contradiction in terms. For the act is one which, by the supposition, the agent knows to be a mischievous one. How, then, can it be, that good-will, that is, the desire of doing good, could have been the motive that led him into it? To reconcile this, we must advert to the distinction between enlarged benevolence and confined. The motive that led him into it, was that of confined benevolence. Had he followed the dic-

tates of enlarged benevolence, he would not have done what he did. Now, although he followed the dictates of that branch of benevolence, which in any single instance of its exertion is mischievous, when opposed to the other, yet, as the cases which call for the exertion of the former are, beyond comparison, more numerous than those which call for the exertion of the latter, the disposition indicated by him, in following the impulse of the former, will often be such as in a man, of the common run of men, may be allowed to be a good one upon the whole.

13.

A man, with a numerous family of children on the point of starving, goes into a baker's shop, steals a loaf, divides it all among the children, reserving none of it for himself. It will be hard to infer that that man's disposition is a mischievous one upon the whole. Alter the case: give him but one child, and that hungry perhaps, but in no imminent danger of starving: and now let the man set fire to a house full of people, for the sake of stealing money out of it to buy the bread with. The disposition here indicated will hardly be looked upon as a good one.

14.

Another case will appear more difficult to decide than either. Ravaillac assassinated one of the best and wisest of sovereigns, at a time when a good and wise sovereign, a blessing at all times so valuable to a state, was particularly precious; and that to the inhabitants of a populous and extensive empire. He is taken, and doomed to the most excruciating tortures. His son, well persuaded of his being a sincere penitent, and that mankind, in case of his being at large, would have nothing more to fear from him, effectuates his escape: Is this, then, a sign of a good disposition in the son, or of a bad one? Perhaps some will answer, of a bad one; for, besides the interest which the nation has in the sufferings of such a criminal, on the score of the example, the future good behaviour of such a criminal is more than any one can have sufficient ground to be persuaded of.

15.

Well, then, let Ravaillac, the son, not facilitate his father's escape, but content himself with conveying poison to him, that at the price of an easier death he may escape his torments. The decision will now, perhaps, be more difficult. The *act* is a wrong one, let it be allowed, and such as ought by all means to be pun-

ished: but is the *disposition* manifested by it a bad one? Because the young man breaks the laws in this one instance, is it probable, that if let alone, he would break the laws in ordinary instances, for the satisfaction of any inordinate desires of his own? The answer of most men would probably be in the negative.

16.

Where the tendency of the act is *good*, and the motive is a semi-social one, the *love of reputation*. In this case, the disposition indicated is a good one.

In a time of scarcity, a baker, for the sake of gaining the esteem of the neighbourhood, distributes bread *gratis* among the industrious poor. Let this be taken for granted: and let it be allowed to be a matter of uncertainty, whether he had any real feeling for the sufferings of those whom he has relieved, or no. His disposition, for all that, cannot, with any pretence of reason, be termed otherwise than a good and beneficent one. It can only be in consequence of some very idle prejudice, if it receives a different name. *

17.

Where the tendency of the act is *bad*, and the motive, as before, is a semi-social one, the love of reputation. In this case, the disposition which it indicates is more or less good or bad: in the first place, according as the tendency of the act is more or less mischievous: in the next place, according as the dictates of the moral sanction, in the society in question, approach more or less to a coincidence with those of utility. It does not seem probable, that in any nation, which is in a state of tolerable civilisation—in short, in any nation in which such rules as these can come to be consulted, the dictates of the moral sanction will so far recede from a coincidence with those of utility (that is, of enlightened

* The bulk of mankind, ever ready to depreciate the character of their neighbours, in order indirectly to exalt their own, will take occasion to refer a motive to the class of bad ones as often as they can find one *still better*, to which the act might have owed its birth. Conscious that his own motives are not of the best class, or persuaded that if they be, they will not be referred to that class by others; afraid of being taken for a dupe, and anxious to show the reach of his penetration; each man takes care, in the first place, to impute the conduct of every other man to the least laudable of the motives that can account for it; in the next place, when he has gone as far that way as he can, and cannot drive down the individual motive to any lower class, he changes his battery, and attacks the very class itself. To the love of reputation he will accordingly give a bad name upon every occasion, calling it ostentation, vanity, or vainglory.

benevolence) that the disposition indicated in this case can be otherwise than a good one upon the whole.

18.

An Indian receives an injury, real or imaginary, from an Indian of another tribe. He revenges it upon the person of his antagonist with the most excruciating torments: the case being, that cruelties inflicted on such an occasion gain him reputation in his own tribe. The disposition manifested in such a case can never be deemed a good one, among a people ever so few degrees advanced, in point of civilisation, above the Indians.

19.

A nobleman (to come back to Europe) contracts a debt with a poor tradesman. The same nobleman, presently afterwards, contracts a debt, to the same amount, to another nobleman, at play. He is unable to pay both: he pays the whole debt to the companion of his amusements, and no part of it to the tradesman. The disposition manifested in this case can scarcely be termed otherwise than a bad one. It is certainly, however, not so bad as if he had paid neither. The principle of love of reputation, or (as it is called in the case of this partial application of it) honour, is here opposed to the worthier principle of benevolence, and gets the better of it. But it gets the better also of the self-regarding principle of pecuniary interest. The disposition, therefore, which it indicates, although not so good a one as that in which the principle of benevolence predominates, is better than one in which the principle of self-interest predominates. He would be the better for having more benevolence: but would he be the better for having no honour? This seems to admit of great dispute.

20.

Where the tendency of the act is *good*, and the motive is the semi-social one of *religion*. In this case, the disposition indicated by it (considered with respect to the influence of it on the man's conduct towards others) is manifestly a beneficent and meritorious one.

A baker distributes bread *gratis* among the industrious poor. It is not that he feels for their distresses: nor is it for the sake of gaining reputation among his neighbours. It is for the sake of gaining the favour of the Deity; to whom, he takes for granted, such conduct will be acceptable. The disposition manifested by such conduct is plainly what every man would call a good one.

21.

Where the tendency of the act is *bad*, and the motive is that of religion, as before. In this case the disposition is dubious. It is good or bad, and more or less good or bad, in the first place, as the tendency of the act is more or less mischievous ; in the next place, according as the religious tenets of the person in question approach more or less to a coincidence with the dictates of utility.

22.

It should seem from history, that even in nations in a tolerable state of civilisation in other respects, the dictates of religion have been found so far to recede from a coincidence with those of utility ; in other words, from those of enlightened benevolence ; that the disposition indicated in this case may even be a bad one upon the whole. This, however, is no objection to the inference which it affords of a good disposition in those countries (such as perhaps are most of the countries of Europe at present) in which its dictates respecting the conduct of a man towards other men approach very nearly to a coincidence with those of utility. The dictates of religion, in their application to the conduct of a man in what concerns himself alone, seem in most European nations to savour a good deal of the ascetic principle : but the obedience to such mistaken dictates indicates not any such disposition as is likely to break out into acts of pernicious tendency with respect to others. Instances in which the dictates of religion lead a man into acts which are pernicious in this latter view, seem at present to be but rare ; unless it be acts of persecution, or impolitic measures on the part of government, where the law itself is either the principal actor, or an accomplice in the mischief. Ravaillac, instigated by no other motive than this, gave his country one of the most fatal stabs that a country ever received from a single hand ; but happily the Ravaillacs are but rare. They have been more frequent, however, in France, than in any other country during the same period : and it is remarkable, that in every instance it is this motive that has produced them. When they do appear, however, nobody, I suppose, but such as themselves, will be for terming a disposition, such as they manifest, a good one. It seems hardly to be denied, but that they are just so much the worse for their notions of religion ; and that had they been left to the sole guidance of benevolence, and the love of reputation, without any religion at all, it would have been but so much the better for mankind. One may say nearly the same thing, per-

haps, of those persons who, without any particular obligation, have taken an active part in the execution of laws made for the punishment of those who have the misfortune to differ with the magistrate in matters of religion, much more of the legislator himself, who has put it in their power. If Louis XIV. had had no religion, France would not have lost 800,000 of its most valuable subjects. The same thing may be said of the authors of the wars called holy ones; whether waged against persons called Infidels, or persons branded with the still more odious name of Heretics. In Denmark, not a great many years ago, a sect is said to have arisen, who, by a strange perversion of reason, took it into their heads that, by leading to repentance, murder, or any other horrid crime, might be made the road to Heaven. It should all along, however, be observed, that instances of this latter kind were always rare; and that, in almost all the countries of Europe, instances of the former kind, though once abundantly frequent, have for some time ceased. In certain countries, however, persecution at home (or what produces a degree of restraint, which is one part of the mischiefs of persecution; I mean the *disposition* to persecute whensoever occasion happens) is not yet at an end: insomuch that, if there is no *actual* persecution, it is only because there are no heretics; and if there are no heretics, it is only because there are no thinkers.

23.

Where the tendency of the act is *good*, and the motive (as before) is the dissocial one of ill-will. In this case, the motive seems not to afford any indication on either side: it is no indication of a good disposition; but neither is it any indication of a bad one.

You have detected a baker in selling short weight: you prosecute him for the cheat. It is not for the sake of gain that you engaged in the prosecution; for there is nothing to be got by it: it is not from public spirit: it is not for the sake of reputation; for there is no reputation to be got by it: it is not in the view of pleasing the Deity: it is merely on account of a quarrel you have with the man you prosecute. From the transaction, as thus stated, there does not seem to be anything to be said either in favour of your disposition, or against it. The tendency of the act is good; but you would not have engaged in it, had it not been from a motive which there seems no particular reason to conclude will ever prompt you to engage in an act of the same kind again. Your motive is of that sort which may, with least

impropriety, be termed a bad one; but the act is of that sort which, were it engaged in ever so often, could never have any evil tendency; nor indeed any other tendency than a good one. By the supposition, the motive it happened to be dictated by was that of ill-will; but the act itself is of such a nature as to have wanted nothing but sufficient discernment on your part in order to have been dictated by the most enlarged benevolence. Now, from a man's having suffered himself to be induced to gratify his resentment by means of an act of which the tendency is good, it by no means follows that he would be ready on another occasion, through the influence of the same sort of motive, to engage in any act of which the tendency is a bad one. The motive that impelled you was a dissocial one: but what social motive could there have been to restrain you? None, but what might have been outweighed by a more enlarged motive of the same kind. Now, because the dissocial motive prevailed when it stood alone, it by no means follows that it would prevail when it had a social one to combat it.

24.

Where the tendency of the act is *bad*, and the motive is the dissocial one of malevolence. In this case the disposition it indicates is of course a mischievous one.

The man who stole the bread from the baker, as before, did it with no other view than merely to impoverish and afflict him. Accordingly, when he had got the bread, he did not eat, or sell it; but destroyed it. That the disposition, evidenced by such a transaction, is a bad one, is what everybody must perceive immediately.—i. 60-64.

OPERATION OF THE SANCTIONS IN FAVOUR OF MORALITY.

Timothy Thoughtless and Walter Wise* were fellow-apprentices. Thoughtless gave in to the vice of drunkenness; Wise abstained from it. Mark the consequence.

1. Physical sanction. For every debauch, Thoughtless was rewarded by sickness in the head. To recruit himself, he lay in bed the next morning, and his whole frame became enervated by relaxation; and when he returned to his work, his work ceased to be a source of satisfaction to him.

Walter Wise refused to accompany him to the drinking table.

* It will readily be perceived that the idea of this illustration is taken from Hogarth's Industry and Idleness.—*Ed.*

His health had not been originally strong, but it was invigorated by temperance. Increasing strength of body gave increasing zest to every satisfaction he enjoyed : his rest at night was tranquil, his risings in the morning cheerful, his labour pleasurable.

2. Social sanction. Timothy had a sister, deeply interested in his happiness. She reproved him at first, then neglected, then abandoned him. She had been to him a source of great pleasure —it was all swept away.

Walter had a brother, who had shown indifference to him. That brother had watched over his conduct, and began to show an interest in his wellbeing—the interest increased from day to day. At last he became a constant visiter, and a more than common friend, and did a thousand services for his brother, which no other man in the world would have done.

3. Popular sanction. Timothy was member of a club, which had money and reputation. He went thither one day in a state of inebriety ; he abused the secretary, and was expelled by an unanimous vote.

The regular habits of Walter had excited the attention of his master. He said one day to his banker—The young man is fitted for a higher station. The banker bore it in mind ; and on the first opportunity, took him into his service. He rose from one distinction to another ; and was frequently consulted on business of the highest importance by men of wealth and influence.

4. Legal sanction. Timothy rushed out from the club whence he had been so ignominiously expelled. He insulted a man in the streets, and walked penniless into the open country. Reckless of everything, he robbed the first traveller he met : he was apprehended, prosecuted, and sentenced to transportation.

Walter had been an object of approbation to his fellow-citizens. He was called, by their good opinion, to the magistracy. He reached its highest honours ; and even sat in judgment on his fellow-apprentice, whom time and misery had so changed that he was not recognised by him.

5. Religious sanction. In prison, and in the ship which conveyed Timothy to Botany Bay, his mind was alarmed and afflicted with the apprehension of future punishment—an angry and avenging Deity was constantly present to his thoughts, and every day of his existence was embittered by the dread of the Divine Being.

To Walter the contemplation of futurity was peaceful and pleasurable. He dwelt with constant delight on the benign attributes of the Deity, and the conviction was ever present to him

that it must be well, that all ultimately must be well, to the virtuous. Great, indeed, was the balance of pleasure which he drew from his existence, and great was the sum of happiness to which he gave birth.—*Deontology*, vol. i. p. 118-121.

SELF-RESTRAINT.

In proportion as a man has acquired a command over his desires, resistance to their impulse becomes less and less difficult, till, at length, in some constitutions, all difficulty vanishes. In early life, for example, a man may have acquired a taste for wine, or for a particular species of food. Finding it disagree with his constitution, little by little, the uneasinesses following on the gratification of his appetite become so frequent, so constantly present to his recollection, that the anticipation of the future certain pain gains strength enough to overpower the impression of the present pleasure. The idea of the greater distant suffering has extinguished that of the lesser contemporaneous enjoyment. And it is thus that, by the power of association, things, which had been originally objects of desire, become objects of aversion ; and, on the other hand, things which had been originally objects of aversion, such as medicines, for instance, become objects of desire. In the case above referred to, the pleasure not being in possession, could not, of course, be *sacrificed*—it was non-existent ; nor was there self-denial in the case, for as the desire which had originally been calling for its gratification was no longer in existence, there remained no demand to which denial could be opposed. When things are in this situation, the virtue, so far from being annihilated, has arrived at the pinnacle of its highest excellence, and shines forth in its brightest lustre. Defective, indeed, would that definition of virtue be, which excluded from its pale the very perfection of virtue.—*Deontology*, vol. i. p. 144-145.

PHYSICAL AND MORAL DELICACY COMPARED.

Between physical and moral delicacy, a connexion has been observed, which, though formed by the imagination, is far from being imaginary. Howard and others have remarked it. It is an antidote against sloth, and keeps alive the idea of decent restraint, and the habit of circumspection. Moral purity and physical are

spoken of in the same language: scarce can you inculcate or commend the one, but some share of the approbation reflects itself upon the other. In minds in which the least grain of Christianity has been planted, this association can scarce fail of having taken root: scarce a page of Scripture but recalls it. Washing is a holy rite: those who dispute its spiritual efficacy, will not deny its physical use. The ablution is typical: may it be prophetic!—Alas! were it but as easy to wash away moral as corporeal foulness!—iv. 158.

THE MOTIVES CONNECTED WITH SYMPATHY AND ANTIPATHY.

To the pleasures of sympathy corresponds the motive which, in a neutral sense, is termed good-will. The word sympathy may also be used on this occasion; though the sense of it seems to be rather more extensive. In a good sense, it is styled benevolence: and in certain cases, philanthropy; and, in a figurative way, brotherly love; in others, humanity; in others, charity; in others, pity and compassion; in others, mercy; in others, gratitude; in others, tenderness; in others, patriotism; in others, public spirit. Love is also employed in this as in so many other senses. In a bad sense, it has no name applicable to it in all cases: in particular cases it is styled partiality. The word zeal, with certain epithets prefixed to it, might also be employed sometimes on this occasion, though the sense of it be more extensive; applying sometimes to ill as well as to good will. It is thus we speak of party zeal, national zeal, and public zeal. The word attachment is also used with the like epithets: we also say family-attachment. The French expression, *esprit de corps*, for which as yet there seems to be scarcely any name in English, might be rendered, in some cases, though rather inadequately, by the terms corporation-spirit, corporation-attachment, or corporation-zeal.

1. A man who has set a town on fire is apprehended and committed: out of regard or compassion for him, you help him to break prison. In this case the generality of people will probably scarcely know whether to condemn your motive or to applaud it: those who condemn your conduct, will be disposed rather to impute it to some other motive: if they style it benevolence or compassion, they will be for prefixing an epithet, and calling it false benevo-

lence or false compassion.* 2. The man is taken again, and is put upon his trial: to save him, you swear falsely in his favour. People, who would not call your motive a bad one before, will perhaps call it so now. 3. A man is at law with you about an estate: he has no right to it: the judge knows this, yet, having an esteem or affection for your adversary, adjudges it to him. In this case the motive is by everybody deemed abominable, and is termed injustice and partiality. 4. You detect a statesman in receiving bribes: out of regard to the public interest, you give information of it, and prosecute him. In this case, by all who acknowledge your conduct to have originated from this motive, your motive will be deemed a laudable one, and styled public spirit. But his friends and adherents will not choose to account for your conduct in any such manner: they will rather attribute it to party enmity. 5. You find a man on the point of starving: you relieve him; and save his life. In this case your motive will by everybody be accounted laudable, and it will be termed compassion, pity, charity, benevolence. Yet in all these cases the motive is the same: it is neither more nor less than the motive of good-will.

To the pleasures of malevolence, or antipathy, corresponds the motive which, in a neutral sense, is termed antipathy or displeasure: and, in particular cases, dislike, aversion, abhorrence, and indignation: in a neutral sense, or perhaps a sense leaning a little to the bad side, ill-will: and, in particular cases, anger, wrath, and enmity. In a bad sense it is styled, in different cases, wrath, spleen, ill-humour, animosity, hatred, malice, rancour, rage, fury, cruelty, tyranny, envy, jealousy, revenge, misanthropy, and by other names, which it is hardly worth while to endeavour to collect. Like good-will, it is used with epithets expressive of the persons who are the objects of the affection. Hence we hear of party enmity, party rage, and so forth. In a good sense there seems to be no single name for it. In compound expressions it may be spoken of in such a sense, by epithets, such as *just* and

* Among the Greeks, perhaps the motive, and the conduct it gave birth to, would, in such a case, have been rather approved than disapproved of. It seems to have been deemed an act of heroism on the part of Hercules, to have delivered his friend Theseus from hell: though divine justice, which held him there, should naturally have been regarded as being at least upon a footing with human justice. But to divine justice, even when acknowledged under that character, the respect paid at that time of day does not seem to have been very profound, or well-settled: at present, the respect paid to it is profound and settled enough, though the name of it is but too often applied to dictates which could have had no other origin than the worst sort of human caprice.

laudable, prefixed to words that are used in a neutral or nearly neutral sense.

1. You rob a man : he prosecutes you, and gets you punished : out of resentment you set upon him, and hang him with your own hands. In this case your motive will universally be deemed detestable, and will be called malice, cruelty, revenge, and so forth. 2. A man has stolen a little money from you : out of resentment you prosecute him, and get him hanged by course of law. In this case people will probably be a little divided in their opinions about your motive : your friends will deem it a laudable one, and call it a just or laudable resentment : your enemies will perhaps be disposed to deem it blameable, and call it cruelty, malice, revenge, and so forth : to obviate which, your friends will try perhaps to change the motive, and call it public spirit. 3. A man has murdered your father : out of resentment you prosecute him, and get him put to death in course of law. In this case your motive will be universally deemed a laudable one, and styled as before, a just or laudable resentment : and your friends, in order to bring forward the more amiable principle from which the malevolent one, which was your immediate motive, took its rise, will be for keeping the latter out of sight, speaking of the former only, under some such name as filial piety. Yet in all these cases the motive is the same : it is neither more nor less than the motive of ill-will.—i. 52-54.

ILLUSTRATIONS OF THE MOTIVE OF LOVE OF APPROBATION.

1. You have received an affront from a man : according to the custom of the country,—in order, on the one hand, to save yourself from the shame of being thought to bear it patiently, on the other hand, to obtain the reputation of courage,—you challenge him to fight with mortal weapons. In this case your motive will, by some people, be accounted laudable, and styled honour ; by others it will be accounted blameable, and these, if they call it honour, will prefix an epithet of improbation to it, and call it false honour. 2. In order to obtain a post of rank and dignity, and thereby to increase the respect paid you by the public, you bribe the electors who are to confer it, or the judge before whom the title to it is in dispute. In this case, your motive is commonly accounted corrupt and abominable, and is styled, perhaps, by some such name as dishonest or corrupt ambition, as there is no

single name for it. 3. In order to obtain the good-will of the public, you bestow a large sum in works of private charity or public utility. In this case, people will be apt not to agree about your motive. Your enemies will put a bad colour upon it, and call it ostentation; your friends, to save you from this reproach, will choose to impute your conduct not to this motive, but to some other; such as that of charity, (the denomination in this case given to private sympathy,) or that of public spirit. 4. A king, for the sake of gaining the admiration annexed to the name of conqueror, (we will suppose power and resentment out of the question,) engages his kingdom in a bloody war. His motive, by the multitude, (whose sympathy for millions is easily overborne by the pleasure which their imagination finds in gaping at any novelty they observe in the conduct of a single person,) is deemed an admirable one. Men of feeling and reflection, who disapprove of the dominion exercised by this motive on this occasion, without always perceiving that it is the same motive which, in other instances, meets with their approbation, deem it an abominable one; and, because the multitude, who are the manufacturers of language, have not given them a simple name to call it by, they will call it by some such compound name, as the love of false glory or false ambition. Yet, in all four cases, the motive is the same: it is neither more nor less than the love of reputation.—i. 51-52.

RATIO OF WEALTH TO HAPPINESS.

Take any individual: give him a certain quantity of money, you will produce in his mind a certain quantity of pleasure. Give him again the same quantity, you will make an addition to the quantity of his pleasure. But the magnitude of the pleasure produced by the second sum, will not be twice the magnitude of the pleasure produced by the first. While the sums are small, the truth of this position may not be perceivable. But let the sums have risen to a certain magnitude, it will be altogether out of doubt; and it will then be matter of mathematical certainty, that the diminution cannot have been made to take place in the case of the greatest quantity, without having been made to take place, to a proportionable amount, in the case of the several lesser quantities.

Take, for example, on the one hand, a labouring man, who, for the whole of his life, has a bare, but sure subsistence; call his

income £20 a-year. Take, on the other hand, the richest man in the country, who, of course, will be the monarch, if there is one; call his income £1,000,000. The net quantities of happiness produced by the two incomes respectively—what will be their ratio to each other? The quantity of money received annually by the monarch is, on this supposition, 50,000 times as great as that received, in the same time, by the labourer. This supposed, the quantity of pleasure in the breast of the monarch will naturally be greater than the quantity in the breast of the labourer. Be it so: but by how much,—by how many times greater? Fifty thousand times? This is assuredly more than any man would take upon himself to say. A thousand times, then?—a hundred?—ten times?—five times?—twice?—which of all these shall be the number? Weight, extent, heat, light—for quantities of all these articles, we have perceptible and expressible measures: unhappily, or happily, for quantities of pleasure or pain, we have no such measures. Ask a man to *name* the ratio,—if he knows what the purpose is, his answer will vary according to the purpose. If he be a poet or an orator—and the purpose of the moment requires it—with as little scruple will he make the labourer's happiness superior to the monarch's, as inferior to it. For the monarch's, taking all purposes together, *five times* the labourer's seems a very large, not to say an excessive allowance: even *twice*, a liberal one.

After it has thus been applied to the case of the richest individual in the country, apply the estimate to the case of the next richest; suppose the man with £200,000 a-year, and so downwards. If the monarch's pleasure is not in any greater ratio to the labourer's, than that of five to one, the excess of this next richest man's pleasure, as compared with the labourer's, cannot be so great. Carry the comparison down through the several intermediate quantities of income,—in the account of pleasure, the balance in favour of the non-labourer, as against the labourer, will thus be less and less.

As it is with *money*, so is it with all other sources or causes of pleasure; *factitious dignity*, for example. Give a man a ribbon, you will produce in his mind a certain quantity of pleasure. To this ribbon add another, you may add more or less to the former quantity of his pleasure. You may *add* to it; but you will not *double* it. Cover him with ribbons,—as, at the expense of his starving subjects, some of the King of England's servants are covered with gold lace,—till the colour of the coat is scarcely visible; add even money in proportion, still will it be matter of

doubt whether the quantity of pleasure in his mind will be double the quantity existing in the mind of the labouring man above mentioned.—iv. 541.

The man who is born in the lap of wealth, is not so sensible of the value of fortune, as he who is the artisan of his own fortune. It is the pleasure of acquiring, and not the satisfaction of possessing, which is productive of the greatest enjoyment. The first is a lively sensation, sharpened by desire and previous privations: the other is a feeble sentiment, formed by habit, unenlivened by contrast, and borrowing nothing from imagination.—i. 305.

INEQUALITY IN THE DISTRIBUTION OF HONOURS.

Every honour that has been conferred on any man, in whose instance it is not clear that extraordinary service to the public has in any shape been done, is conferred in a more particular manner, at the expense of all those by whom extraordinary service to the public has really been rendered: it is felt by them as an injury. It has always for its tendency, and to an unmeasurable extent for its effect, the preventing men in general from taking on themselves any extraordinary burthen, for the purpose of rendering to the public, in any shape, extraordinary service.—ix. 85.

PUBLIC OPINION.

Public Opinion may be considered as a system of law, emanating from the body of the people. If there be no individually assignable form of words in and by which it stands expressed, it is but upon a par in this particular with that rule of action which, emanating as it does from lawyers, official and professional, and not sanctioned by the Legislative authority, otherwise than by tacit sufferance, is, in England, designated by the appellation of *Common Law*. To the pernicious exercise of the power of government, it is the only check; to the beneficial, an indispensable supplement. Able rulers lead it; prudent rulers lead or follow it; foolish rulers disregard it. Even at the present stage in the career of civilisation, its dictates coincide, on most points, with those of the *greatest-happiness principle;* on some, however, it still deviates from them: but, as its deviations have all along been less and less numerous, and less wide, sooner or later they

will cease to be discernible ; aberration will vanish, coincidence will be complete.—ix. 158.

INFLUENCE OF POWER ON OPINION.

How wicked, (it is frequently said)—how absurd and hopeless the enterprise, to make war upon opinions! Alas! would it were as absurd and hopeless, as it is wicked and pernicious! Upon opinions, in an immediate way, yes. To crush the idea in the mind, to act upon it by mechanical pressure or impulse, is not in the power of the sword or of the rod. In an unimmediate, though, for efficacy, not too remote way, through the medium of discourses, no : for what, in the case of opinions (unhappily for mankind) is but too much in the power of the sword and of the rod, is, to crush the enunciating and offending pen or tongue : to cut asunder the muscles by which they are moved.

Unhappily, the power of the will over opinion, through the medium of discourse, is but too well understood by men in power. Meantime, thus much is plain enough : the more credible the facts in themselves are, the less need has a man to seek to gain credence for them by such means. By such means, credit may be given to facts the most absurd, currency to opinions the most pernicious. Facts which are true, opinions which in their influence are beneficial to society, have no need of such support. If this be to be admitted, the consequence seems undeniable. To employ such means for the securing credence to any fact, is to confess its falsehood and absurdity ; to employ such means for the support of any opinion, is to confess its erroneousness and mischievousness. To pursue such ends by such means, is to betray, and virtually to confess, the practice of imposture, the consciousness of guilt.—vii. 108.

CLASS INTERESTS.

It is the interest of the community at large that truth alone should be uttered ; that the language of mendacity and deception should be abstained from on every judicial occasion, and on almost every other occasion : abstained from, although, and for the very reason that, the commission of it threatened to be beneficial to the particular interests that act in opposition to the general in-

terests:—to the common interests, for example, of thieves and smugglers.

It is the interest of the community that truth should be revealed, as often as the disclosure of it *promises* to be conducive to the bringing down of punishment upon the heads of thieves and smugglers. But it is the interest of thieves and smugglers that truth should never be revealed, but always concealed, as often as the disclosure of it *threatens* to be conducive to the bringing down punishment on the heads of thieves or smugglers. Among these malefactors, therefore, the section of the moral sanction, which applies to testimony, prescribes mendacity while it prohibits, and, as far as may be, punishes veracity, as an act of vice and treachery.

In any community composed of thieves or smugglers, is any act of depredation committed by one member to the prejudice of the rest? The force of the moral sanction changes now its direction, though not its nature: the force of this section of the popular sanction now joins itself to that of the whole;—mendacity is recognised as a vice—veracity as a virtue.—vi. 266.

THE POWER OF ABSOLUTION.

In every community,—it is of the *obedience* of the men subject to authority, that the *power* of the man possessed of authority is composed: in proportion to the need which each person so subject conceives himself to have of the beneficial exercise of such authority, will be the strictness of that obedience: proportioned to the self-attested wickedness of the sinner, is the magnitude of the demand he has for absolution, in whatsoever shape and from whatsoever hand such deliverance may peradventure come.

Thus it is, that,—the effective power of the confessor being as the multitude and enormity of the sins, real or imagined, of the penitent,—it is in that respect the interest of the confessor, that, in the eyes of the penitent, and thence that in reality, these sins should be as multitudinous as possible; and thence for example it is, that, without exception or distinction, the words *miserable sinners—us miserable sinners*—are regularly crammed into their mouths; that so, by a perpetual fever, a perpetual demand for opiates, such as the laboratory of the confessor is furnished with, may be kept up.

Under the Church of Rome, the potion is administered in the *retail* way,—drop by drop, *by hand* as it were,—to each patient by himself: and accordingly it is under that one of the two

churches that the subjection is most entire : under the Church of England, under the dominion of its universities, it can only be administered in the *wholesale* way : it can only be administered, as if it were *by steam*, to the whole flock of penitents in the lump. In this mode, to administer it with any chance of effect, required no small degree of art : it has been, or will presently be seen, what that art has been, and with what success it has been practised.—v. 210-211.

THE PUNISHMENT OF EXCOMMUNICATION.

Part of the punishment consists in the delinquent's being looked upon, if men think fit to look upon him in that light, as a heathen and a publican.

To try the effect of generals, the only way is to apply them to particulars. A. is not willing, or not able, to pay his proctor's, or another man's proctor's fees : he is in consequence excommunicated. Amongst his other punishments, he is to be looked upon as a heathen or a publican ; that is, as being such a sort of man as Socrates, Cato, Titus, Marcus Antoninus, a collector of taxes, or a Lord of the Treasury. The heaping of hard names upon a man might, at one time, have been deemed a punishment ; but such legal trifling now-a-days, serves only to render the laws ridiculous.

Exclusion from the churches. In our days, an exclusion of this sort shows rather oddly under the guise of punishment. The great difficulty is now not to keep people out of the churches, but to get them in. The punishment, however, was not ill-designed, if it were intended to increase the desire of attending there, by forbidding it—the general effect of every prohibition being to give birth to a desire to infringe it : it affords a presumption, that what is prohibited is in itself desirable, or at least desirable in the opinion of the legislator, or he would not have prohibited it. Such is the natural supposition, when the interdiction relates to an unknown object ; but even when it relates to an object which has been tried, and neglected from distaste, the prohibition gives to it another aspect. The attention is directed to the possible advantages of the act : having begun to think of them, the individual fancies he perceives them, and goes on to exaggerate their value : on comparing his situation with that of those who enjoy this liberty, he experiences a feeling of inferiority ; and, by degrees, a most intense desire often succeeds to the greatest indifference.—i. 514-515.

SINISTER INTERESTS ALARMED AT "INNOVATION."

Could the wand of that magician be borrowed, at whose potent touch the emissaries of his wicked antagonist threw off their several disguises, and made instant confession of their real character and designs,—could a few of those ravens by whom the word *innovation* is uttered with a scream of horror, and the approach of the monster *anarchy* denounced,—be touched with it, we should then learn their real character, and have the true import of these screams translated into intelligible language.

1. I am a lawyer, (would one of them be heard to say,)—a fee-fed judge—who, considering that the money I lay up, the power I exercise, and the respect and reputation I enjoy, depend on the undiminished continuance of the abuses of the law, the factitious delay, vexation, and expense with which the few who have money enough to pay for a chance of justice are loaded, and by which the many who have not are cut off from that chance,—take this method of deterring men from attempting to alleviate those torments in which my comforts have their source.

2. I am a sinecurist, (cries another,) who being in the receipt of £38,000 a-year, public money, for doing nothing, and having no more wit than honesty, have never been able to open my mouth and pronounce any articulate sound for any other purpose,—yet, hearing a cry of "No sinecures!" am come to join in the shout of "No innovation! down with the innovators!" in hopes of drowning, by these defensive sounds, the offensive ones which chill my blood and make me tremble.

3. I am a contractor, (cries a third,) who having bought my seat that I may sell my votes—and in return for them being in the habit of obtaining with the most convenient regularity a succession of good jobs, foresee, in the prevalence of innovation, the destruction and the ruin of this established branch of trade.

4. I am a country gentleman (cries a fourth,) who observing that from having a seat in a certain assembly a man enjoys more respect than he did before, on the turf, in the dog-kennel, and in the stable, and having tenants and other dependents enough to seat me against their wills for a place in which I am detested, and hearing it said that if innovation were suffered to run on unopposed, elections would come in time to be as free in reality as they are in appearance and pretence,—have left for a day or two the cry of "Tally-ho!" and "Hark forward!" to join in the cry of "No anarchy!" "No innovation!"

5. I am a priest, (says a fifth,) who having proved the pope to be antichrist to the satisfaction of all orthodox divines whose piety prays for the cure of souls, or whose health has need of exoneration from the burthen of residence; and having read, in my edition of the Gospel, that the apostles lived in palaces, which innovation and anarchy would cut down to parsonage-houses; though grown hoarse by screaming out, "No reading!" "No writing!" "No Lancaster!" and "No popery!"—for fear of coming change, am here to add what remains of my voice to the full chorus of "No anarchy!" "No innovation!"—ii. 420.

UNEQUAL CONTEST BETWEEN REASON AND SINISTER INTEREST.

How unequal is the contest between honesty and reason on the one part, and sinister interest in or out of office on the other!—how hard the lot of the advocate on the honest side! On the part of sinister interest, a short phrase composed of falsehood and nonsense is thrown out, and this is to be accepted as a reason—as a reason, and that of itself a conclusive one, on which the whole difference between good government and bad government in this country, and thence perhaps in every other—at this time, and thence perhaps at all times—is to depend.

The advocate of reason sets himself to work: he displays the nothingness, he detects and exposes the fallacies. What is he the better? The exposure is turned aside from: the compound of falsehood and nonsense continues to be delivered, with the same effrontery and the same intolerant arrogance as ever. Even were that abandoned, some other phrase of the like material would be employed instead of it: the same work would be to do over again, and with equal fruit.—iii. 620.

POPULAR APPLAUSE.

The people are a set of masters whom it is not in a man's power in every instance fully to please, and at the same time faithfully to serve. He that is resolved to persevere without deviation in the line of truth and utility, must have learnt to prefer the still whisper of enduring approbation, to the short-lived bustle of tumultuous applause.—i. 239.

PREJUDICES IN FAVOUR OF SPENDTHRIFTS.

The business of a money-lender, though only among Christians and in Christian times a proscribed profession, has nowhere, nor at any time, been a popular one. Those who have the resolution to sacrifice the present to the future, are natural objects of envy to those who have sacrificed the future to the present. The children who have eaten their cake, are the natural enemies of the children who have theirs. While the money is hoped for, and for a short time after it has been received, he who lends it is a friend and benefactor: by the time the money is spent, and the evil hour of reckoning is come, the benefactor is found to have changed his nature, and to have put on the tyrant and the oppressor. It is an oppression for a man to reclaim his own money; it is none to keep it from him. Among the inconsiderate, that is, among the great mass of mankind, selfish affections conspire with the social in treasuring up all favour for the man of dissipation, and in refusing justice to the man of thrift who has supplied him. In some shape or other, that favour attends the chosen object of it through every stage of his career. But in no stage of *his* career can the man of thrift come in for any share of it. It is the general interest of those with whom a man lives, that his expense should be at least as great as his circumstances will bear; because there are few expenses which a man can launch into, but what the benefit of them is shared, in some proportion or other, by those with whom he lives. In that circle originates a standing law, forbidding every man, on pain of infamy, to confine his expenses within what is adjudged to be the measure of his means, saving always the power of exceeding that limit as much as he thinks proper; and the means assigned him by that law may be ever so much beyond his real means, but are sure never to fall short of them. So close is the combination thus formed between the idea of merit and the idea of expenditure, that a disposition to spend finds favour in the eyes even of those who know that a man's circumstances do not entitle him to the means: and an upstart, whose chief recommendation is this disposition, shall find himself to have purchased a permanent fund of respect, to the prejudice of the very persons at whose expense he has been gratifying his appetites and his pride. The lustre which the display of borrowed wealth has diffused over his character, awes men during the season of his prosperity into a submission to his insolence, and when the hand of adversity has overtaken him at

last, the recollection of the height from which he has fallen, throws the veil of compassion over his injustice.

The condition of the man of thrift is the reverse. His lasting opulence procures him a share, at least, of the same envy that attends the prodigal's transient display : but the use he makes of it procures him no part of the favour which attends the prodigal. In the satisfactions he derives from that use—the pleasure of possession, and the idea of enjoying at some distant period, which may never arrive—nobody comes in for any share. In the midst of his opulence he is regarded as a kind of insolvent, who refuses to honour the bills which their rapacity would draw upon him, and who is by so much the more criminal than other insolvents, as not having the plea of inability for an excuse.

Could there be any doubt of the disfavour which attends the cause of the money-lender in his competition with the borrower, and of the disposition of the public judgment to sacrifice the interest of the former to that of the latter, the stage would afford a compendious, but a pretty conclusive proof of it. It is the business of the dramatist to study, and to conform to, the humours and passions of those on the pleasing of whom he depends for his success ; it is the course which reflection must suggest to every man, and which a man would naturally fall into, though he were not to think about it. He may, and very frequently does, make magnificent pretences of giving the law to them : but woe be to him that attempts to give them any other law than what they are disposed already to receive ! If he would attempt to lead them one inch, it must be with great caution, and not without suffering himself to be led by them at least a dozen. Now I question whether, among all the instances in which a borrower and a lender of money have been brought together upon the stage, from the days of Thespis to the present, there ever was one, in which the former was not recommended to favour in some shape or other—either to admiration, or to love, or to pity, or to all three ;—and the other, the man of thrift, consigned to infamy.—iii. 17.

CHARGES OF POPULAR INJUSTICE.

The injustices of the Athenians, had they been ten times as frequent as they were, would not, in my view of things, be much to the present purpose.* Had the Athenians representative bodies?

* Viz., as an argument against democratic ascendancy.

—had they the light of two thousand years of history to guide them?—or the art of printing to diffuse it? When the Athenians were cruel and unjust, were the Dionysiuses and Artaxerxeses less so? In the people, injustice has at least been followed by repentance: acting in bodies, and especially under the veil of secrecy, they have not that pride which keeps men from growing better: a despot, when he has injured a man, hates him but the more. As little would my notion of the probable conduct of the people, that is, of select men chosen by select men, in the exercise of an unquestioned right, in quiet times, be taken from the conduct of a few unknown individuals among a vast multitude, in the heat of a revolution brought on by excess of despotism. Much sooner would I look to America, where the people bear undisputed sway, and ask, in so many years of popular government, what violences or injustice to the prejudice of their servants have ever yet been presented by the history of thirteen commonwealths? —iv. 363.

RULES OF POLITENESS.

If the affections of him with whom you are about to commence a conversation be matter of indifference to you, all topics are open to you: if it be an object with you to gain or keep his affections, choose that topic, whatever it be, that is most agreeable to him. At any rate, you may avoid every topic which you know, or suspect, to be disagreeable to him.

So as to hearing and making others hear: matter of prudence as to the proportion of time for making display, and hearing the companion's display.

Kind words cost no more than unkind ones. Kind words produce kind actions, not only on the part of him to whom they are addressed, but on the part of him by whom they are addressed, —understand, not incidentally only, but habitually, in virtue of the principle of association.—x. 519.

If, in conversing with a man, you find him imbued with opinions which to you seem mischievously erroneous, if there be a probability of converting him, make the attempt, giving him as little uneasiness as may be. But if there be no such probability, do no such thing: as where there is no probability of your seeing him often enough. You wound his feelings, and you draw upon yourself his displeasure.—x. 532.

STATE OF SOCIETY, WHICH MAY BE IMPROVED BY MILITARY DISCIPLINE.

In a certain state of things, through the instrumentality of collateral employments,—the stipendiary land defensive-force service will be seen to be, by means of the discipline which is inseparable from it, capable of being rendered conducive to habits of *labour*, to *profit-seeking* industry, and thence to *contentment* and moral deportment. *Place*, where the heat of the climate, and the facility of obtaining land with rude produce on it sufficient for subsistence, have concurred in producing an aversion to labour: *time*, when the formation of new states, and the struggles almost inseparable from that process, have concurred in producing an exclusive demand for service in the two branches—one or other of them, or both—of the defensive-force service; especially that of which dry land is the theatre.

In this state of things, if, as in France and other old-established states, the whole male population, appropriate exceptions excepted, are, by what is called *conscription*, aggregated to the army service, though not, as in those cases, for a small number of years, but for a large number, say from twelve to twenty, or upwards, and in the course of that time occupied in collateral employments, the habit of obedience, and the habit of labour may thus be formed in conjunction, useful literary and other intellectual instruction being, during a portion of each day, superadded. Through plenitude of mental occupation, contentment,—the fruit of a continuity of moderate and pleasurable desire, excitement, and corresponding gratification,—with urbanity of deportment, may thus be substituted to listlessness, uneasiness, discontent, and quarrelsomeness, the natural endemial diseases of unfurnished minds. In this manner, that state of things, which is to a certain degree forced upon such communities by the operations of their enemies, may be made subservient to ultimate good. * * * *

An example, of a nature to serve as proof of the amelioration capable of being made by military discipline, in the morality and happiness of a population found by it in a low condition in both these respects,—may be seen in *British India*, in the case of the Native soldiery, styled *sepoys*. As to *morality*, in favour of these, (comparison had with that of the classes from which they are drawn,) for proof, reference may be made to universal testimony: as to *happiness*, in favour of these same persons, the fact, equally notorious, and capable of being made manifest by authentic documents, is—that for the situation of private in that army, there

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are at all times candidates in large numbers. But in so far as they are *willing*, the experienced and yet uninvalided being of course preferred to the inexperienced,—diminution is never produced by other causes than invalidship or death. A circumstance which affords matter for just regret accordingly is—that this part of the official establishment, being, as it is, a receptacle which in so high a degree possesses the property of ameliorating whatsoever is included in it, should be in the state of a reservoir with a valve opening inwards, but none opening outwards, with reference to the mass of the population at large.—ix. 417-418.

INTERESTS CONDUCIVE TO WAR.

Previously to the year 1782, the emoluments of the paymaster of the army, whose duty as such consisted in signing, or knowing how to sign, his name, were considerably higher in time of war than in time of peace, being principally constituted of a per centage on the money expended in his department. This great officer, however, always found himself a member of parliament; and it is believed he was thus paid, not for signing, or knowing how to sign, his name, but for talking, and knowing how to talk. Upon a question of peace or war, the probity of this orator must have found itself in somewhat an awkward predicament, continually besieged as it must have been by *Bellona* with the offer of an enormous revenue, which was to cease immediately he suffered himself to be corrupted by *Peace*. When the question of economical reform was upon the carpet, this place was not forgotten. It was generally felt at that time, that so decided an opposition between interest and duty was calculated to produce the most pernicious consequences. The emoluments of peace and war were, therefore, equalized by attaching a fixed salary to the office, and the same plan was adopted with respect to various other offices.

In running over the list of functionaries, from the highest to the lowest, one cannot but be alarmed at the vast proportion of them who watch for war as for a prey. It is impossible to say to what a degree, by this personal interest, the most important measures of government are determined. It cannot be supposed that ministers of state, generals, admirals, or members of parliament, are influenced in the slightest degree by a vile pecuniary interest. All these honourable persons possess probity as well as wisdom, so that a trifle of money never can produce the slightest influence upon their conduct, not even the effect of an atom upon

the immoveable mass of their probity. The mischief is, that evil-minded persons are not convinced by their assertion, but continue to repeat, that—"The honesty which resists temptation is most noble, but that which flies from it is most secure."—ii. 209.

ADVANTAGES OF A DISARMING TREATY.—EFFECTS OF A EUROPEAN WAR.

If the simple relation of a single nation with a single other nation be considered, perhaps the matter would not be very difficult. The misfortune is, that almost everywhere compound relations are found. On the subject of troops,—France says to England, Yes I would voluntarily make with you a treaty of disarming, if there were only you; but it is necessary for me to have troops to defend me from the Austrians. Austria might say the same to France; but it is necessary to guard against Prussia, Russia, and the Porte. And the like allegation might be made by Prussia with regard to Russia.

Whilst as to naval forces, if it concerned Europe only, the difficulty might, perhaps, not be very considerable. To consider France, Spain, and Holland, as making together a counterpoise to the power of Britain,—perhaps on account of the disadvantages which accompany the concert between three separate nations, to say nothing of the tardiness and publicity of procedure under the Dutch Constitution,—England might allow to all together a united force equal to half as much more than its own.

An agreement of this kind would not be dishonourable. If the covenant were on one side only, it might be so. If it regard both parties together, the reciprocity takes away the acerbity. By the treaty which put an end to the first Punic war, the number of vessels that the Carthaginians might maintain was limited. This condition, was it not humiliating? It might be: but if it were, it must have been because there was nothing correspondent to it on the side of the Romans. A treaty which placed all the security on one side, what cause could it have had for its source? It could only have had one—that is the avowed superiority of the party thus incontestably secured,—such a condition could only have been a law dictated by the conqueror to the party conquered. The law of the strongest. None but a conqueror could have dictated it; none but the conquered would have accepted it.

On the contrary, whatsoever nation should get the start of the other in making the proposal to reduce and fix the amount of its

armed force, would crown itself with everlasting honour. The risk would be nothing—the gain certain. This gain would be, the giving an incontrovertible demonstration of its own disposition to peace, and of the opposite disposition in the other nation in case of its rejecting the proposal.

The utmost fairness should be employed. The nation addressed should be invited to consider and point out whatever further securities it deemed necessary, and whatever further concessions it deemed just.

The proposal should be made in the most public manner :—it should be an address from nation to nation. This, at the same time that it conciliated the confidence of the nation addressed, would make it impracticable for the government of that nation to neglect it, or stave it off by shifts and evasions. It would sound the heart of the nation addressed. It would discover its intentions, and proclaim them to the world.

The cause of humanity has still another resource. Should Britain prove deaf and impracticable, let France, without conditions, emancipate her colonies, and break up her marine. The advantage, even upon this plan, would be immense—the danger none. The colonies, I have already shown,* are a source of expense, not of revenue,—of burthen to the people, not of relief. This appears to be the case, even upon the footing of those expenses which appear upon the face of them to belong to the colonies, and are the only ones that have hitherto been set down to their account. But, in fact, the whole expense of the marine belongs also to that account, and no other. What other destination has it? What other can it have? None. Take away the colonies, what use would there be for a single vessel, more than the few necessary in the Mediterranean to curb the pirates.

In case of a war, where at present (1789) would England make its first and only attack upon France? In the colonies? What would she propose to herself from success in such an attack? What but the depriving France of her colonies. Were these colonies—these bones of contention—no longer hers, what then could England do? what could she wish to do?

There would remain the territory of France ; with what view could Britain make any attack upon it in any way? Not with views of permanent conquest ;—such madness does not belong to our age. Parliament itself, one may venture to affirm, without paying it any very extraordinary compliment, would not wish

* See Section ix. of the Introduction to the Study of the Works.

it. It would not wish it, even could it be accomplished without effort on our part, without resistance on the other. It would not, even though France herself were to solicit it. No parliament would grant a penny for such a purpose. If it did, it would not be a parliament a month. No king would lend his name to such a project. He would be dethroned as surely and as deservedly as James the Second. To say, I will be King of France, would be to say, in other words, I will be absolute in England.

Well, then, no one would dream of conquest. What other purpose could an invasion have? The plunder and destruction of the country. Such baseness is totally repugnant, not only to the spirit of the nation, but to the spirit of the times. Malevolence could be the only motive—rapacity could never counsel it. Long before an army could arrive anywhere, everything capable of being plundered would be carried of. Whatever is portable could be much sooner carried off by the owners, than by any plundering army. No expedition of plunder could ever pay itself.*

Such is the extreme folly, the madness of war. On no supposition can it be otherwise than mischievous, especially between nations circumstanced as France and England. Though the choice of the events were absolutely at your command, you could not make it of use to you. If unsuccessful, you may be disgraced and ruined; if successful, even to the height of your wishes, you are still but so much the worse. You would still be so much the worse, though it were to cost you nothing; for not even any colony of your own planting, still less a conquest of your own making, will so much as pay its own expenses.

The greatest acquisitions that could be conceived would not be to be wished for, could they even be attained with the greatest certainty, and without the least expense. In war, we are as likely not to gain as to gain—as likely to lose as to do either: we can neither attempt the one, nor defend ourselves against the other, without a certain and most enormous expense.

* This brings to recollection the achievements of the war, from 1755 to 1763. The struggle betwixt prejudice and humanity produced, in conduct, a result truly ridiculous. Prejudice prescribed an attack upon the enemy in his own territory,—humanity forbade the doing him any harm. Not only nothing was gained by these expeditions, but the mischief done to the country invaded was not nearly equal to the expense of the invasion. When a Japanese rips open his own belly, it is in the assurance that his enemy will follow his example; but, in this instance, the Englishman ripped open his own belly, that the Frenchman might get a scratch. Why was this absurdity acted? Because we were at war, and when nations are at war, something must be done, or at least appear to be done; and there was nothing else to be done. France was already stripped of all its distant dependencies.

Mark well the contrast. All trade is in its essence advantageous, —even to that party to whom it is least so. All war is in its essence ruinous,—and yet the great employments of government are to treasure up occasions of war, and to put fetters upon trade.

Ask an Englishman what is the great obstacle to a secure and solid peace, he has his answer ready :—It is the ambition, perhaps he will add, the treachery of France. I wish the chief obstacle to a plan for this purpose were the dispositions and sentiments of France! were that all, the plan need not long wait for adoption.

Of this visionary project, the most visionary part is, without question, that for the emancipation of distant dependencies. What will an Englishman say when he sees two French ministers* of the highest reputation—both at the head of their respective departments—both joining in the opinion, that the accomplishment of this event, nay, the speedy accomplishment of it, is inevitable, and one of them scrupling not to pronounce it as eminently desirable.

It would only be the bringing things back, on these points, to the footing they were on before the discovery of America. Europe had then no colonies—no distant garrisons—no standing armies. It would have had no wars, but for the feudal system—religious antipathy—the rage of conquest—and the uncertainties of succession. Of these four causes, the first is happily extinct everywhere ; the second and third almost everywhere, and, at any rate, in France and England ; the last might, if not already extinguished, be so with great ease.

The moral feelings of men, in matters of national morality, are still so far short of perfection, that, in the scale of estimation, justice has not yet gained the ascendancy over force. Yet this prejudice may, in a certain point of view, by accident, be rather favourable to this proposal than otherwise. Truth, and the object of this essay, bid me to say to my countrymen, it is for you to begin the reformation,—it is you that have been the greatest sinners. But the same considerations also lead me to say to them, you are the strongest among nations : though justice be not on your side, force is ; and it is your force that has been the main cause of your injustice. If the measure of moral approbation had been brought to perfection, such positions would have been far from popular ; prudence would have dictated the keeping them out of sight, and the softening them down as much as possible.

* Turgot and Vergennes.

Humiliation would have been the effect produced by them on those to whom they appeared true—indignation on those to whom they appeared false. But, as I have observed, men have not yet learned to tune their feelings in unison with the voice of morality in these points. They feel more pride in being accounted strong, than resentment in being called unjust; or rather, the imputation of injustice appears flattering rather than otherwise, when coupled with the consideration of its cause. I feel it in my own experience; but if *I*,—listed as I am as the professed, and hitherto the only advocate in my own country in the cause of justice,—set a less value on justice than is its due, what can I expect from the general run of men?—ii. 550-552.

NATIONAL JEALOUSIES.

It is because we do not know what strong motives other nations have to be just, what strong indications they have given of the disposition to be so, how often we ourselves have deviated from the rules of justice,—that we take for granted, as an indisputable truth, that the principles of injustice are in a manner interwoven into the very essence of the hearts of other men.

The diffidence, which forms part of the character of the English nation, may have been one cause of this jealousy. The dread of being duped by other nations—the notion that foreign heads are more able, though at the same time foreign hearts are less honest than our own, has always been one of our prevailing weaknesses. This diffidence has, perhaps, some connexion with the *mauvaise honte*, which has been remarked as commonly showing itself in our behaviour, and which makes public speaking and public exhibition in every line a task so much more formidable to us than to other people.

This diffidence may, perhaps, in part be accounted for, from our living less in society, and accustoming ourselves less to mixed companies, than the people of other nations.

But the particular cast of diffidence in question, the apprehension of being duped by foreign powers, is to be referred in part, and perhaps principally, to another cause—the jealousy and slight opinion we entertain of our ministers and public men; we are jealous of them as our superiors, contending against us in the perpetual struggle for power; we are diffident of them as being our fellow-countrymen, and of the same mould as ourselves.

Jealousy is the vice of narrow minds;—confidence the virtue

of enlarged ones. To be satisfied that confidence between nations is not out of nature where they have worthy ministers, one need but read the account of the negotiation between De Wit and Temple, as given by Hume. I say, by Hume:—for, as it requires negotiators like De Wit and Temple to carry on such a negotiation in such a manner, so it required a historian like Hume to do it justice. For the vulgar among historians know no other receipt for writing that part of history, than the finding out whatever are the vilest and basest motives capable of accounting for men's conduct in the situation in question, and then ascribing it to those motives without ceremony and without proof.

Temple and De Wit, whose confidence in each other was so exemplary and so just—Temple and De Wit were two of the wisest, as well as most honourable, men in Europe. The age which produced such virtue, was, however, the age of the pretended Popish Plot, and of a thousand other enormities which cannot now be thought of without horror. Since then, the world has had upwards of a century to improve itself in experience, in reflection, in virtue. In every other line its improvements have been immense and unquestioned. Is it too much to hope that France and England might produce not a Temple and a De Wit,—virtue so transcendent as theirs would not be necessary,—but men who, in happier times, might achieve a work like theirs with less extent of virtue?—ii. 553-554.

AN INVASION OF AMERICA.

An invading army—Oh, yes; a curious enough sight would be an invading army. But from whence, henceforward is it to come? From no whither, unless it be in a fleet of steam-boats sent out from Washington to fetch it. Yes; the very last invasion from Europe that the confederacy will ever have experienced, is the one which was disposed of by that General,* in whom, because the rifles under him performed so well, the unreflecting multitude behold their fittest President.

From England shall an armament come for this purpose? If expense be mischief—more mischief will it have done *in* England—*to* England—before starting,—than it could reasonably expect to do in the United States, before the country had closed round it, and disposed of it, as *Burgoyne* and *Cornwallis* were disposed of. If to the people of England the Colonies called *their* Colonies were

* General Jackson.

worth anything, who does not see that every one of their compulsorily-governed American Colonies would be in the hands of the *freely-governed United States*, a security for good behaviour on the part of the distant obedience-compelling-rulers?—ix. 348-349.

WARS FOR CONQUEST OR TRADE.

Conquests made by New Zealanders have some sense in them; while the conquered fry the conquerors fatten. Conquests made by the polished nations of antiquity,—conquests made by Greeks and Romans,—had some sense in them. Lands, moveables, inhabitants, everything went into the pocket. The invasions of France in the days of the Edwards and the Henrys, had a rational object. Prisoners were taken, and the country was stripped to pay their ransom. The ransom of a single prisoner, a Duke of Orleans, exceeded one-third of the national revenue of England.

Conquests made by a modern despot of the continent have still some sense in them. The new property being contiguous, is laid on to his old property; the inhabitants, as many as he thinks fit to set his mark upon, go to increase his armies; their substance, as much as he thinks fit to squeeze from them, goes into his purse.

Conquests made by the British nation would be violations of common sense, were there no such thing as justice. They are bungling imitations of miserable originals, bating the essential circumstances. Nothing but confirmed blindness and stupidity can prompt us to go on imitating Alexander and Cæsar, and the New Zealanders, and Catherine and Frederic, without the profit.

If it be the king alone who gets the appointment to the places, it is a part of the nation, it may be said, that gets the benefit of filling them. A precious lottery! Fifty or one hundred millions the cost of the tickets. So many years' purchase of ten or twenty thousand a-year, the value of the prizes. This if the scheme succeed:—what if it fail?

I do not say there are no sharers in the plunder:—it is impossible for the head of a gang to put the whole of it into his own pocket. All I contend for is, that robbery by wholesale is not so profitable as by retail:—if the whole gang together pick the pockets of strangers to a certain amount, the ringleaders pick the pockets of the rest to a much greater. Shall I or shall I not succeed in persuading my countrymen that it is not their interest to be thieves?

"Oh, but you mistake!" cries somebody; "we do not now make

war for conquests, but for trade." More foolish still. This is a still worse bargain than before. Conquer the whole world, it is impossible you should increase your trade one halfpenny :—it is impossible you should do otherwise than diminish it. Conquer little or much, you pay for it by taxes :—but just so much as a merchant pays in taxes, just so much he is disabled from adding to the capital he employs in trade. Had you two worlds to trade with, you could only trade with them to the amount of your capital, and what credit you might meet with on the strength of it. This being true of each trader, is so of all traders. Find a fallacy in this short argument if you can. If you obtained your new right of trading given you for nothing, you would not be a halfpenny the richer: if you paid for them by war or preparations for war—by just so much as you paid for these you would be the poorer.

The good people of England, along with the right of self-government, conquered prodigious right of trade. The Revolution was to produce for them not only the blessings of security and power, but immense and sudden wealth. Year has followed after year, and, to their endless astonishment, the progress to wealth has gone on no faster than before. One piece of good fortune still wanting, they have never thought of :—that on the day their shackles were knocked off, some kind sylph should have slipped a few thousand pounds into every man's pocket. There is no law against my flying to the moon. Yet I cannot get there. Why? Because I have no wings. What wings are to flying, capital is to trade.

There are two ways of making war for trade,—forcing independent nations to let you trade with them, and conquering nations, or pieces of nations, to make them trade with you. The former contrivance is to appearance the more easy, and the policy of it the more refined. The latter is more in the good old way, and the king does his own business and the nation's at the same time. He gets the naming to the places: and the nation cannot choose but join with him, being assured that it is all for the sake of getting them the trade. The places he lays hold of, good man, only out of necessity, and that they may not go a-begging :—on his own account, he has no more mind for them than a new-made bishop for the mitre, or a new-made speaker for the chair. To the increase of trade, both these plans of war equally contribute. What you get in both cases is the pleasure of the war.

The legal right of trading to part of America was conquered by France from Britain in the last war. What have they got by

it? They have got Tobago, bankruptcy, and a revolution, for their fifty millions. Ministers, who to account for the bankruptcy are forced to say something about the war, call it a national one: —the king has not got by it,—therefore the nation has. What has it got? A fine trade, were there but capital to carry it on. With such room for trade, how comes there to be no more of it? This is what merchants and manufacturers are putting themselves to the torture to account for. The sylph so necessary elsewhere, was still more necessary to France; since, over and above her other work, there was the fifty millions spent in powder and shot to replace.—ii. 557-558.

MONARCHS AND WAR.

Monarchs, it may be said, are apt to go to war with each other: and when with any two monarchs this happens to be the case, the subjects of each should in that monarch who is the enemy of their monarch, (that is, of their natural enemy,) have a friend. But in practice this is not the case. The war which one monarch carries on with another monarch is a war of rivalry, but it is not a war of enmity: every monarch is to every other monarch an object of respect: and where there is respect on both sides, no rooted, no decided enmity can be said to have place on either side. Between monarch and monarch, war is, upon the largest scale, that which between professed pugilist and professed pugilist, it is upon the smallest scale. By one another monarchs are styled brothers, and on that one occasion they are sincere; for they have a common interest, and that interest is paramount to every other interest. Many a monarch has given up to a brother monarch, and freely too, dominions which he might have kept if he had pleased. No monarch ever gave up freely to his own subjects an atom of power which in his eyes could be retained with safety. War is a game—a game of backgammon. Between two players at the game of war, there is no more enmity than between two players at backgammon. In the breasts of the players at war there is no more feeling for the men of flesh and bone, than during the game at backgammon there is on the part of the men of wood for one another or themselves. While to one another all monarchs are objects of sympathy, to all monarchs all subjects are objects of antipathy; of a sort of compound sentiment, made up of fear, hatred, and contempt; something like that which women and children are apt to feel for a toad. In the breasts of all monarchs

there accordingly exists at all times a natural alliance, defensive and offensive, against all subjects.

Between injurer and injured, the man on whose part antipathy towards the other is most apt to arise, is he by whom the injury has been inflicted: the one on whose part it arises with greatest difficulty, if ever it arises at all, is he by whom the injury has been sustained.

Betwixt every monarch and every other there exists a powerful cause of sympathy. In the instance of all of them, on the same set of principles, is grounded that obedience by which their power is constituted, and in proportion to which it has place: disposition the effect of habit: habit the effect of force, fear, corruption, delusion, sinister interest, interest-begotten and authority-begotten prejudice. By every other throne he sees shaking, if the shock be from without, he feels the shock communicated to his own.—ix. 129-130.

A DESPOT'S INTEREST IN THE PROSPERITY OF HIS SUBJECTS.

Between every animal of prey on the one part, and the animals preyed upon on the other, a certain community of interests has place. It is the interest of the wolf that the sheep should be fat and abundant, and that pasture, to render them so, should abound at all times. It is the interest of the commander of an invading army, that not only subsistence, but abundance should have place in the greatest possible quantity wherever he makes his inroads. It is the interest of all pirates, that wealth should be abundant in all seas and on all coasts to which their piracies are to be directed. It is the interest of all highwaymen, not only that travellers should be numerous, but that their purses should be well-lined. Exactly of the same sort is the interest which the monarch has in common with his subjects.—ix. 102.

THE VIRTUES OF A MONARCH.

By beneficence, positive or even negative on a small scale, he obtains a reputation by which he is enabled to practise, without reproach, maleficence on the largest scale. "Curse on his virtues! they have destroyed his country!" George the Third, because he behaved well to his wife, was proclaimed *the best of kings*.

Nine times in the course of his sixty years' reign did George the Third, with his ever-ready accomplices, force the people to pay his debts. The trader who, by inevitable misfortune—mere misfortune without the smallest cause of reproach, even on the score of imprudence, is rendered insolvent,—is thereby rendered in a greater or less degree an object of disrespect: still more, and in an increasing ratio, if the like misfortune comes upon him a second time. The insolvencies of George the Third were in every instance the result of his own profusion, without the smallest admixture of misfortune. No money could be issued without his signature: and he was notoriously attentive as well as punctual in the giving of it. He made immense profit by his wars,—profit to himself and family: witness the Droits of Admiralty; and he took care to exempt himself from loss: witness the exemption from the income-tax given to his private property in government annuities—or the *funds*, as the phrase is.—ix. 141-142.

ORIGIN AND PROGRESS OF MONARCHY.

Pure monarchy was the original, because the simplest form of government. It had its origin in the necessity men were under of putting themselves under the command of a single chief, in the wars between one savage or barbarous tribe and another. Thus came on the one part, the habit of obedience; on the other part, the habit of command; and by the frequency of actual war, and the constancy of preparation for a state of war, the habit of obedience and command was preserved from interruption.

The children and next relations of the monarch being naturally most frequently in his company, and in the largest proportion sharers in his confidence, hence it was that the elective monarchy naturally passed into an hereditary one.

But though this was the natural, and in early times, the inevitable state of things, it follows not that it was the state of things in the highest degree contributory to the greatest happiness of the greatest number.

Monarchy comes to have place now, by its being established; almost all men are born under it, all men are used to it, few men are used to anything else: till of late years, nobody ever dispraised it; everybody praised it: nobody saw anything better, nobody knew of anything better, few had heard of anything better: men were reconciled to mixed monarchy in England, by the same causes by which they were reconciled to pure monarchy in Mo-

rocco, Turkey, and Hindostan. No state of things so bad, but that acquiescence under it, may be produced by ignorance of better: in a word, by habit, by authority, and by the instruments of corruption and delusion by which it became surrounded.—ix. 134.

SPIRIT OF DESPOTIC LEGISLATION.

In the view taken of the field of legislation, by the scribe of the absolute monarch, it swarms in every part with rebels. To afford security to him against the enterprises of adversaries in this shape is the most anxious of his cares. He is encompassed with enemies on all sides and at all times: the very form of his government, the objects and design so undisguisedly evidenced by it, suffices to convert into adversaries to him, all men who are not so to their fellow-countrymen and themselves. Of their hatred, he assures himself: of the justness of it, as well as of the impossibility of keeping it from coming into existence, he is fully conscious. The utmost he can hope for is to guard himself against that part of its effects which is most formidable to him. In this view, he scruples not to appoint punishment for the manifestation of it: punishment for all those who, seeing what he is, make known to others what they see: punishing all who, on any occasion on which their sentiments are other than favourable to him, make known those sentiments. If there be any sure methods of creating hatred, this is one of them: but seeing love hopeless, seeing every affection better than hatred inconsistent with every rational view of the case, he is content thus to draw upon himself hatred, for the additional chance which he thus thinks to give himself of escaping from the effects of it.—ix. 134.

CIVIL WAR IN REPUBLICS.

Under a representative democracy, though there can be no lese majesty, divine or human, nor anything of that stamp, there may be hostility: for there may be disagreement; disagreement by men in any numbers on two opposite sides: and how improbable soever, such disagreement may rise to hostility. Here then is war; and this war a civil war. It will be carried on as in the case of ordinary war, carried on between civilized nations: it will be carried on, by each in such a manner, as shall present to its view the fairest promise for the attainment of its end, with the

least damage,—in the first place to itself, in the next place to the enemy. Some will accordingly, on the losing side at least, be killed, others wounded, others in the situation of prisoners, left at the disposal of the commander of the victorious army.

Having them at his disposal, how will he deal with them? Does he put them to death in cold blood, with a gang of lawyers to give form and colour to his cruelty? Will he, with any such gang for his prompters, tell them that their blood is corrupt, and that on that account it was just and necessary that their wives and children should be destitute of subsistence, and in that state kept by law, as far as practicable till they die? No; he will do nothing of all these things: the men he will keep to the best of his power; their arms he will as soon as possible take into his custody, lest they should turn them against him and his. But sooner or later hostility will give place to peace. On that joyful occasion these captives will, the whole remainder of them, be sent back to their homes and families, bodies fed, wounds healed, ignominy in no shape, either cast upon them, or endeavoured to be cast. Whence all these differences? Answer: On neither side has any vice-god been seen or fancied: and on neither side has any such word as legitimacy been pronounced.—ix. 38.

ARISTOCRACIES NEVER ABDICATE.

Of voluntary surrenders of *monarchy*—surrenders made into the hands of expectant and monarchical successors, there is no want of examples: not even in modern—not even in European history:—Charles the Fifth of Germany, monarch of so many vast monarchies—Christina of Sweden—Victor Amadeus of Savoy—Philip the Fifth of Spain:—here, in so many different nations, we have already four examples. But, on the part of an *aristocratical* body, of the surrender of any the minutest particle of power which they were able to retain, where is there as much as any one example to be found?—iii. 527.

CHARGES AGAINST THE PEOPLE OF DESIGNING THE SUBVERSION OF PROPERTY.

Supposing destruction to come, they, and not their adversaries, would be the first to be involved in it; and this priority is too manifest to have ever been unobserved by themselves.

Yes, if they were all agriculturists, on that supposition, with a spade in hand, ground to turn up with it, and potato-cuttings to put into it, if a man could live for a time without fuel or fresh clothing, he might keep himself alive, provided always that he could wait till the potato-germs had grown into potatoes.

Such is the condition in which, on the receipt of the supposed benefit, the labourers in husbandry would find themselves placed: such the prospect which it would hold out to them. The labourers in manufactures, and other labourers other than those in husbandry, —what is the prospect it would hold out to *them?* In comparison with their lot, the lot of the man bred up in husbandry labour—ruinous as we have seen it—would be an enviable one. The period arrived, the husbandman would have nothing to learn; the non-husbandman would have everything to learn—digging, manuring, sowing, weeding, reaping, everything: all this he would have to learn, and in the meantime he would have to starve.

Meantime, the supposed objects of this desperate rage—the owners of property—how would it be with them? They would be the last to suffer: all of them together the last; and among them, the richer a man were, and thence by the supposition the more obnoxious, the longer it would be before his time of suffering came. With more or less disadvantage, he who had property would, by exporting it along with himself, retain a part of it, or get something for it in the way of exchange. But the supposed intended plunderers, no property could they export, any more than their own persons; the land they could not export, and that, with or without buildings on it, is all—so it has been shown over and over again—that would be left in their hands. Yes: it is upon their heads that the calamity would fall in the first instance. Never, anywhere, but in the wages of labour, can they have beholden the source of their subsistence. As to the manufacturers in particular, in no small proportion have they had for their sole purchasers the opulent class, as rising one above another throughout the whole scale of opulence.

Long before the time when the power of commencing the partition had got into any of the hands charged with being disposed to use it, the proprietors, instead of continuing to employ any of their money, as usual, in the purchase of the manufactures they had been accustomed to consume, would cease from all such purchases altogether. With everything they had, or could get, that is exportable, they would take their flight from the country, as above. —iii. 607-608.

ANTICIPATED EFFECTS OF A GENERAL EQUALISATION OF PROPERTY.

The English nation is, for a nation of any considerable size, generally acknowledged to be the richest, in proportion to the number of the people, of any nation under the sun. But in this richest nation, those who have reckoned its wealth at the highest, have not set down the annual expenditure of its inhabitants, taking even the very richest into the account, at more than £20 a-year each. If, then, the whole wealth of the nation were divided with the most perfect equality among its inhabitants; and were all of it capable of being thus divided, it would scarcely be more than sufficient to enable every one of them, so long as the stock of it was kept up at the same level, to spend more than £20 a-year. But were such a distribution to be made, an immense multitude of articles—wealth to an immense amount—must necessarily be struck out, as being incapable of division, and thence incapable of entering into the distribution. At 30 years' purchase, a perpetual income of £20 a-year corresponds to a capital or principal sum of £600. All articles, therefore, of a value superior to £600, must either be destroyed at once, or left to perish, sooner or later, for want of being kept up; that is, kept in repair, and properly taken care of.

The following, then, are the articles to the existence of which the system in question would be fatal; and that not only in the first instance, but for ever after during its continuance; and of which the aggregate value must therefore be struck out of the aggregate amount of the national wealth.

1. All buildings above the mark; that is, all that would now be thought to come under the name of considerable buildings—all considerable dwelling-houses, warehouses, manufactories.

2. All furniture, except what is now of the meanest kind—all furniture suitable to the circumstances of a family having more than £20 a-year a-head to live on.

3. All horses, except a few of those at present kept for husbandry. No one nor two in a family could afford to keep a horse, since the expense of that article alone would exceed the family income. All horses fit for military service; consequently a great part of the manure which is supplied by that valuable species of cattle would be lost. In the earliest, and what are vulgarly called the purest times of the Roman Commonwealth, those whose wealth enabled them to serve on horseback formed an order of men, distinct from and superior to those who served on foot. A common-

wealth that admitted of such distinctions, could never be tolerated under this system of equalisation.

4. All considerable libraries. All libraries the value of which depended upon their completeness in regard to any particular branch of literature, and of which the characteristic value would be destroyed by the degree of dispersion which the execution of the equalisation plan would necessitate.

5. All considerable collections of natural history; and hence all means of prosecuting that branch of study to advantage would cease.

6. All considerable laboratories and establishments for the prosecution of experimental inquiries with a view to the advancement of agriculture, manufactures, or arts. Hence all means of promoting the advancement, or even preventing the decay of experimental science, would cease.

7. All fortunes capable of affording funds sufficient for the purchase of the constant supply of publications relative to any branch of knowledge at the rate of abundance at which the literary market is supplied with these productions in the present state of things.

8. All fortunes capable of affording funds applicable to the improvement of land, mines, or fisheries, upon an extensive and advantageous scale.

9. All fortunes capable of affording, at an early period of life, a fund in store sufficient for the maintenance of the numbers of children of which the marriage union may in every instance, and in many instances will eventually be productive.

10. The whole value of the labours of those whose industry is at present employed in supplying the productions adapted to the demands of persons in easy circumstances—of all those at present employed as workmen in the different branches of the arts, and of the finer manufactures—all musicians, architects, painters, sculptors, engravers, carvers, gilders, embroiderers, weavers of fine stuffs, florists, and the like. All these, finding nobody rich enough to deal with them, must immediately betake themselves to husbandry or other coarse labour, which their habits of life have disqualified them from exercising to any advantage.

11. The whole of that property which consists in annuities payable by government out of the produce of taxes imposed on the fruits of industry. As those taxes are imposed almost exclusively on superfluities, and all superfluities will be expunged from the book of national wealth, national bankruptcy will be among the necessary and immediate consequences of such a change.

12. Whether it be of advantage or of detriment to the state, or a matter of indifference, that small farms should be laid into large ones, is a controverted point, upon which it is not necessary here to touch. But what cannot admit of controversy is, that in a multitude of instances, farms, large or small, would suffer much in value by being broken down into smaller ones. A spring or pond, a convenient communication with the highway or bridge, serves at present for the whole of a farm : divide this farm among a number of proprietors, and only a small part of the original farm, or perhaps no part at all, will now derive any benefit from that conveniency, which before the division was enjoyed by the whole. A certain portion of land fit for one sort of culture, requires certain other portions of land fit for other sorts of culture, to be employed with most advantage;—to so much arable, so much wood, so much meadow land. Under the division, one man has wherewithal to buy the meadow land only, another the wood-land only, and the arable must be divided into several little plots, to come within the quantum of purchase-money which the equalisation plan allows. There are fields, each of them too large for any one purchaser, and which, without new enclosures correspondent to the number of the purchasers, must lose the benefit of enclosure. But the purchaser's capital is all of it expended in the purchase : he has nothing, no fund left for the expenses of enclosure. One house, one set of outhouses, serve for the whole of the farm in its undivided state. Divide it into the £20 a-year portions, he who gets the dwelling-house is perhaps unable to get the outhouses; if he get the house and outhouses, he perhaps is unable to get any of the land; if he get a small scrap of the land, and it can be but a small one, none of the other fragments of farms carved out of the entire farm has any building belonging to it. But without buildings, they will be worth little or nothing; and as to erecting the buildings, it is impossible : what capital each man had, is expended in the purchase of the naked land. But as every man must have a house to live in, and every man who cultivates a farm must have outhouses of some kind or other to lodge the stock and produce of it, a fund for these articles of indispensable necessity must be provided in the first instance, and the fragments of farms must consequently be reduced to the miserable and unproductive pittance, the annual value of which corresponds to the small remnant of capital that remains to buy them. Thus great is the part of the existing mass of wealth which would therefore be destroyed by the division, as being in its own nature incapable of division. But of that which remained, as not being

in its own nature incapable of division, a great part again would be consumed in the process. The whole mass of national property would have to come under the hammer; and every time either the sale of an estate or a division of the produce of the sale came to be made, every sale and every distribution would afford a fresh source of disputes between the plundered and the plundered, between plunderers and plunderers, and between plunderers and plundered, and a fresh demand for the labours of, and a fresh harvest for the men of law. Auctioneers with their retainers are already, in the present system of things, in no small number; men of law in greater number than most people would wish to see. On the system in question, the populousness of these predatory professions would be multiplied beyond all measure. An effective tithe of the national property, not to speak of a nominal tithe like the present ecclesiastical one, would scarcely be sufficient for the payment of this enormous mass of unproductive and disastrous services.

Present time, it may be said, is but a point: it is as nothing in comparison with futurity. Admitting that the existing generation might, upon the whole, be losers by such a change, those whose ardent zeal would prompt them to attempt it, may still think, or affect to think, the change an advantageous one for the human species upon the whole. But futurity would have as little reason to rejoice in it as present time.

Opulence is valuable, not merely on its own account, but as a security for subsistence. The rich, were they to deserve proscription because of their riches, deserve to be saved from proscription in quality of bankers to the poor. Estates broken down to the scantling in question, or to anything like that scantling, would afford no resource against scarcity, or any other calamity, such as fire, famine, or pestilence, that required a considerable treasure in store to be employed to alleviate the load of it. They would afford no fund for the expenses of a war, even of a defensive one.

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As to the gainers—(I speak always of the immediate and momentary gainers, for ultimately, as we shall see, there would scarcely be a real gainer left in the nation)—as to the real gainers, if they were to be looked for anywhere, it would be in the class of the present day-labourers in husbandry. Their employment need not be changed: they would continue labourers in husbandry, with this comfortable difference, as it would be thought, of labouring upon, and for the benefit of their own property, instead of other people's. But even these would for the most

part gain nothing but ruin by the change. Their fragments of farms having no buildings on them, would be useless to them till buildings could be erected. A man might farm profitably, and live comfortably a year or two hence, if he were then alive: but in the meantime he would not be able to farm or live at all. The immense multitude of new created farms, all of them without buildings, would require an immense and instant multiplication of the number of workmen concerned in building. But this number, instead of being multiplied, or so much as increased, would be as immediately and permanently reduced: for they too would have their portions, as well as the labourers in husbandry: if they laboured any longer, it would be upon their own property, not upon other people's. If they laboured at all, what inducement would they have to labour upon other people's property, or indeed for other people? What would they get by it? an addition to their respective portions? But that, by the supposition is not to be suffered. No sooner was it become property, than it would come to be divided: no sooner had they got it, than it would be taken from them.

This supposes everybody, day-labourers and mechanics, devoted to industry, disposed to frugality, proof against all temptation to excess, even in the midst of a sudden and unexpected influx of the momentary means of excess and dissipation. But even in the present system of things, this extraordinary degree of moderation is, under such circumstances, hardly to be expected from one in ten among those classes; and under the proposed new system, industry and frugality would be but folly, as we shall presently have occasion to observe.

Who would be the losers—I mean the immediate losers—by such a change? Those, and at first sight it might seem those only, whose present fortunes are above the mark. But these would be but a small part of the real and effective losers. To the list of present proprietors must be added that of all those sons of industry whose present annual earnings are to a certain amount superior in value to the intended common portion;—all professional men in any tolerable practice—physicians, surgeons, lawyers, artists, factors, and the like;—many handicrafts of the superior kind, such as mathematical-instrument makers, millwrights, shipwrights, musical-instrument makers, &c.; and even mere labourers, where the labour is severe, as coal-heavers, &c., earn from £50 to £200 a-year, which the greater part of them are in the habit of spending as it comes. What would be either their present feelings, or even their future advantage, on chang-

ing their £50 or £200 a-year for life into a perpetuity even of £20 a-year, supposing the common portion could amount to so much, instead of falling widely short of that mark, as it will soon be seen to do?

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But why combat shadows, it may be said, and expatiate upon a scheme of equalisation which you are representing as impracticable? It is only for equality, so far, and so far only as it is practicable, and practicable to advantage, that we contend: for the lopping off the superfluities of overgrown and excessive opulence, for alleviating the sufferings of excessive misery: for planting and maintaining the virtuous race of industrious proprietors, for planting and maintaining plenty without luxury, and independence without insolence. To push any system to an absurd excess, and then give the abuse of the system as the system itself —what can be more uncandid or more inconclusive? Your objections would be just enough if applied to the abuse of the system proposed, but have no force against a moderate and prudent application of it.

My answer is, that it admits not of any moderate or prudent application: that the principle admits not of your stopping anywhere in the application of it: that on pain of abandoning and passing condemnation on the principle, when once the process of forced equalisation is begun, it must go on and be pursued all lengths, even to the lengths that have been described: that the principles publicly avowed by the professed partisans of equality, go all these lengths in the very words, as well as according to the spirit of their most public and most boasted productions: that the doctrine of equal rights is laid down without reserve: that no line is drawn, or attempted to be drawn; that the words employed exclude the drawing of any such line; and that if any line had been drawn, or were to be attempted to be drawn, the attempt would not so much as palliate, much less remedy the evil: and that to the imputation of error it would only add the reproach of inconsistency and dereliction of principle.

To stop at any one point in the career of forced equalisation, would neither afford security to such of the rich as it left unplundered, nor satisfaction to the poor whom it left unenriched. An object being avowed, which can never be attained so long as I have a penny more than the beggar that plies before my door, what assurance can I give myself any day (says the rich man, who hath as yet been spared,) that it may not be my turn the next? Will the vagabonds that have as yet got no share, be satisfied

with the plunder that has fallen to the lot of their brother vagabonds that are consuming theirs? Where is the justice, where the equality of this pretended equalisation plan? cries the expectant beggar, whom the division has not yet reached. Why have my wants been so long neglected, while those of my neighbour have been so long satisfied? Am I less a citizen than he? is my happiness less a part of the happiness of the community than his? So far from gaining by the change, I am as yet a loser by it. Till now, only the few, now the many, are above me. Till now, my superiors were out of my sight; now they are incessantly at my elbow. Till now, my superiors were all strangers to me; now my equals, my familiars, swell the list. Not a step can I stir without falling in with an acquaintance, revelling in enjoyments, of which, it seems, I am destined never to partake.

As these discontents will arise at every step made in the progress, so will they at every other that can be made, and always with equal reason—or rather with superior and accumulating reason. Every preceding step will have afforded a precedent, and the commencement of a justification of the succeeding ones: what at first was theory, will have been settled into practice: what at first was innovation, will have become establishment: till at length the original race of proprietors having been reduced to nothing, and all hope or possibility of repairing an injustice done to them being annihilated, the opposition made by justice will have ceased: justice will have become indifferent, and as it were, neutral: the injustice of going on will not be exceeded by the injustice of stopping. Name who can the point at which the line of stoppage can be drawn. No such line hath as yet been drawn by any man; no such line attempted to be drawn by any man. Let arbitrary power have decreed (and what but power the most arbitrary could decree) that a line of this sort shall be drawn; that bounds of this sort shall be set to the process of equalisation,—what but caprice can draw it? what but corruption will be said or will be thought to have set them? * * *

Not only the good expected from such a change would be too expensive, but were it ever so desirable, it would be altogether unattainable—at least unmaintainable for two instants together. Past equality does not answer the intention—present equality is the object; and whatever reason there may be for aiming at it at any one period of time, the same reason will there be for maintaining it at every other period of time. A fresh division must therefore be made upon every division that happened in the number of the sharers: a fresh division upon every birth, and upon

every death a fresh division; or the inutility and folly of the original division must stand confessed.

Of this perpetual necessity of fresh divisions, what would be the result? Nobody would have anything he could call his own: all property would in effect be destroyed—all present property, and all prospect of security in respect of property in future: all idea of subsistence except from hand to mouth: all incentive to labour beyond the satisfaction of the necessities of the day; for why should I bestow my labour to-day in the improvement of that property, which may be torn from me to-morrow?

A fresh division would again require to take place every time a person became helpless to such a degree as to be unable to make his own little property (his £15, his £10 a-year, or whatever the original portion of £20 was reduced to) suffice for his own maintenance—a fresh division, or some other arrangement capable of answering the same purpose. Every birth adds, during the age of helplessness, to the sum of burthens; every death, by taking from the sum of burthens, adds relatively to the sum of benefits. But the addition made to the sum of burthens by infirmity happening to a grown person, is much greater than that made by the birth of an infant: the adult requires many times as much as the infant for his sustenance. The portion of the adult, now become helpless, was too small to afford him subsistence without the benefit of his labour to improve it. Being now incapable of all labour, he must either perish, or, to keep him alive, the portion of other people must be laid under contribution to make up the difference. Here, then, comes the necessity of a system to answer the purpose of the present poor-laws, with this difference—that for maintaining the growing increase of the poor, there remain none but what are poor already. The dispensations of equality have brought back the age of virtue—be it so: but virtue, however it may diminish disease, will not destroy it; virtue will not extirpate the small-pox nor the contagious fever; virtue will not prevent legs nor arms from breaking; virtue will not give robustness nor agility to the extremity of old age.

Equality amongst the members of a community—equality, whatever be the standard portion—includes two points: that no member shall have more than that portion; and that no one shall have less. The first of these points is attainable by the equalisation system to great perfection: the latter not. To the latter, this pure and exalted system is not more competent than the present abusive and corrupt one: it is even much less so. To industry it affords no new encouragement; on the contrary, it

takes from it whatever encouragement it has at present. To what purpose should I earn more than the poorest of my fellow-citizens, when so much as I earn more than them, so much will be taken from me. Neither to idleness nor to dissipation does it administer any new discouragement; on the contrary, it gives to both of these dispositions encouragement, and that the greatest they can receive. Putting idleness upon a footing of equality in point of future advantage with industry, and dissipation with frugality, it gives to each the portion of present pleasure with which it is attended, clear. Why, so long as I have a penny left, should I refuse the most expensive desire its gratification—when, whatever I dissipate of my own present stock, must be made up to me from that of other people? To what purpose, while I have a penny left, should I plague myself with working—when, so long as I have anything to pay, others will work for me with pay, and when I have no longer pay to give them, they must work for me without it?

Here, then, is a perpetual race between dissipation and idleness on the one hand, and that plan of division, whatever it be, by which the law of equalisation is carried into execution, on the other: dissipation and idleness continually widening the gap; division of property using its best endeavours to fill it up. But the pace of dissipation is the pace of the racer; the pace of legal division that of the tortoise.

All this while, the members of the community are divided into two classes: the industrious and frugal, slaves toiling for others: the idle and prodigal, lords and masters, enjoying for themselves. Such would be the fruit of the equalisation system, while the execution of it was going on, until a certain portion of the national wealth having been destroyed in a variety of ways, and a certain portion of the national population destroyed by a mixture of famine and excess, the miserable would awaken from their delirium, curse the system and its inventors, and join their endeavours to bring back the former state of things.—i. 358–364.

EFFECT OF A SPONGE ON THE NATIONAL DEBT.

Would not the nation be the poorer, if a sponge were passed over the national debt? Would not there be so much property destroyed? Not an atom more than would be produced at the same instant. Would not the nation be less wealthy? No: not at least at the instant of the change. Would it be less happy?

Yes: wretched in the extreme. Soon after, would it be less wealthy? Yes: to a frightful degree, by reason of the shock given to security in respect to property, and the confusion that would ensue. Thirty millions a-year that used to be received by annuitants, no longer received—thirty millions a-year that used to be paid in taxes by all classes, and all individuals together, for the payment of those annuitants, no longer paid. National wealth would no more be diminished by the sponge, than it is when a handkerchief is transferred from the pocket of a passenger to the pocket of a thief. Sum for sum, however, the enjoyment produced by gain is not equal to the suffering produced by loss. In this difference, traced through all its consequences, lies the mischief, and the sole mischief, of bankruptcy or of theft.—iii. 81.

ARE THE MULTITUDE PREJUDICED AGAINST PROPERTY AND FAMILY?

Look to the most populous of all populous boroughs! Look to Westminster! Number of electors, even many years back, not fewer than 17,000: swine not all of them indeed—the Dean and Chapter being of the number—not to speak of Right Honourables and Honourables;—swine's flesh, however, predominant—abundantly predominant: swinish the character, of the vast majority of that vast multitude.

Well, then, look to Westminster—look first to time present—see now what you have there. See you not Lord Cochrane? What do you see there? See you not blood and property in one?—blood from ancestors—property from the source most prized—the source from whence all your oldest property sprung—enemies' blood, with plunder for the fruit of it?—See you not Sir Francis Burdett?—have not you there blood enough and property enough? Look now a little back:—Before you had either Cochrane or Burdett, had not you Charles Fox? had you him not as long as the country had him?

Even within this twelvemonth, when a vacancy was apprehended, what sort of man was it that was looked to for the filling of it? Was it a man *of* and *from* the people? Was it the *Cobbett*, with his penmanship, his 60,000 purchasers, and his ten times 60,000 readers? Was it the *Henry Hunt*, with his oratory? Was it not *Cartwright*, of the *Cartwrights* of *Northamptonshire*?—was it not *Brougham* of *Brougham*?—and howsoever by these men the plea of Ulysses might be put in—"Neve mihi noceat

quod vobis semper Achivi profuit *ingenium*," not the less were there the *genus* et *proavi*;—and whether sitting for Westminster, or looked to for Westminster, the case of a man who had neither the *blood* element nor the *property* element, remains still without example.

Look at Bristol, the next most populous city. When a man was looked for, who should, if possible, stem the tide of corruption—that tide which so naturally flows so strong in maritime and commercial cities—who is it that was looked for? Was it the Spa Fields orator?—did he not try and fail there? Was it not Sir Samuel Romilly?—and though (from an irregularity, for which, by some country gentleman or other, whose *aptitude* was in his *acres*,—a Mr *Eyre*, or a Mr *Frankland*, which was it?—he was so consistently called to order,) the blood he had came from the wrong side of the channel, (and with a something in it too nearly allied to *puritanism* to be relished by *legitimacy*,)—yet (not to speak of the *swinish* elements, which are of no value but in *Utopia*) —blood, such as it was, there was in him—*blood?*—yes; and *property* too,—though, whether then as now *savouring of the reality*, let others, who know, say,—to sanction it.—iii. 469.

IS PROPERTY THE SECURITY FOR ATTACHMENT TO COUNTRY?

Property, it is continually said, is the only bond and pledge of attachment to country.—Not it, indeed. Want of property is a much stronger one. He who has property can change the shape of it, and carry it with him to another country, whenever he pleases: he who has no property, can do no such thing. In the eyes of those who live by the labour of others, the existence of those by whose labour they live, is indeed of no value: not so in the eyes of the labourers themselves. Life is not worth more to yawners than to labourers: and their own country is the only country in which the latter can so much as hope to live. Among a hundred of them, not ten exceptions to this will you find.—iii. 560.

WHAT IS NATURAL LIBERTY?

To say that a law is contrary to natural liberty, is simply to say that it is a law; for every law is established at the expense

of liberty—the liberty of Peter at the expense of the liberty of Paul.

When a law is reproached as hurtful to liberty, the inconvenience is not a particular ground of complaint against that law—it is shared by all laws. The evil which it causes in this manner—is it greater than the good which it does in other ways? This is the only question to be examined.—iii. 185.

SPECIMENS OF A CRITICISM ON THE FRENCH DECLARATION OF RIGHTS.*

ARTICLE I.—*Men* [*all men*] *are born and remain free, and equal in respect of rights. Social distinctions cannot be founded, but upon common utility.*

In this article are contained, grammatically speaking, two distinct sentences. The first is full of error, the other of ambiguity.

In the first are contained four distinguishable propositions, all of them false—all of them notoriously and undeniably false:—

1. That all men are born free.
2. That all men remain free.
3. That all men are born equal in rights.
4. That all men remain (*i. e.* remain for ever, for the proposition is indefinite and unlimited) equal in rights.

All men are born free? All men remain free? No, not a single man: not a single man that ever was, or is, or will be. All men, on the contrary, are born in subjection, and the most absolute subjection—the subjection of a helpless child to the parents on whom he depends every moment for his existence. In this subjection every man is born—in this subjection he continues for years—for a great number of years—and the existence of the individual and of the species depends upon his so doing.

What is the state of things to which the supposed existence of these supposed rights is meant to bear reference?—a state of things prior to the existence of government, or a state of things subsequent to the existence of government? If to a state prior to the existence of government, what would the existence of such rights as these be to the purpose, even if it were true, in any country where there is such a thing as government? If to a state of things subsequent to the formation of government—if in a

* The "Declaration of the Rights of Man and the Citizen," decreed in the Constituent Assembly in 1791.

country where there is a government, in what single instance—in the instance of what single government, is it true? Setting aside the case of parent and child, let any man name that single government under which any such equality is recognised.

All men born free? Absurd and miserable nonsense! When the great complaint—a complaint made perhaps by the very same people at the same time, is—that so many men are born slaves. Oh! but when we acknowledge them to be born slaves, we refer to the laws in being; which laws being void, as being contrary to those laws of nature which are the efficient causes of those rights of man that we are declaring, the men in question are free in one sense, though slaves in another;—slaves, and free, at the same time:—free in respect of the laws of nature—slaves in respect of the pretended human laws, which, though called laws, are no laws at all, as being contrary to the laws of nature. For such is the difference—the great and perpetual difference, betwixt the good subject, the rational censor of the laws, and the anarchist—between the moderate man and the man of violence. The rational censor, acknowledging the existence of the law he disapproves, proposes the repeal of it: the anarchist, setting up his will and fancy for a law before which all mankind are called upon to bow down at the first word—the anarchist, trampling on truth and decency, denies the validity of the law in question,—denies the existence of it in the character of a law, and calls upon all mankind to rise up in a mass, and resist the execution of it.

Whatever is, is,—was the maxim of Des-Cartes, who looked upon it as so sure, as well as so instructive a truth, that everything else which goes by the name of truth might be deduced from it. The philosophical vortex-maker—who, however mistaken in his philosophy and his logic, was harmless enough at least—the manufacturer of identical propositions and celestial vortices—little thought how soon a part of his own countrymen, fraught with pretensions as empty as his own, and as mischievous as his were innocent, would contest with him even this his favourite and fundamental maxim, by which everything else was to be brought to light. *Whatever is, is not*—is the maxim of the anarchist, as often as anything comes across him in the shape of a law which he happens not to like.

"Cruel is the judge," says Lord Bacon, "who, in order to enable himself to torture men, applies torture to the law." Still more cruel is the anarchist, who, for the purpose of effecting the subversion of the laws themselves, as well as the massacre of the

legislators, tortures not only the words of the law, but the very vitals of the language.

All men are born equal in rights. The rights of the heir of the most indigent family equal to the rights of the heir of the most wealthy? In what case is this true? I say nothing of hereditary *dignities* and *powers*. Inequalities such as these being proscribed under and by the French government in France, are consequently proscribed by that government under every other government, and consequently have no existence anywhere. For the total subjection of every other government to French government, is a fundamental principle in the law of universal independence—the French law. Yet neither was this true at the time of issuing this Declaration of Rights, nor was it meant to be so afterwards. The 13th article, which we shall come to in its place, proceeds on the contrary supposition: for, considering its other attributes, inconsistency could not be wanting to the list. It can scarcely be more hostile to all other laws than it is at variance with itself.

All men (*i. e.* all human creatures of both sexes) *remain equal in rights.* All men, meaning doubtless all human creatures. The apprentice, then, is equal in rights to his master; he has as much liberty with relation to the master, as the master has with relation to him; he has as much right to command and to punish him; he is as much owner and master of the master's house, as the master himself. The case is the same as between ward and guardian. So again as between wife and husband. The madman has as good right to confine anybody else, as anybody else has to confine him. The idiot has as much right to govern everybody, as anybody can have to govern him. The physician and the nurse, when called in by the next friend of a sick man seized with a delirium, have no more right to prevent his throwing himself out of the window, than he has to throw them out of it. All this is plainly and incontestably included in this article of the Declaration of Rights: in the very words of it, and in the meaning—if it have any meaning. Was this the meaning of the authors of it?—or did they mean to admit this explanation as to some of the instances, and to explain the article away as to the rest? Not being idiots, nor lunatics, nor under a delirium, they would explain it away with regard to the madman, and the man under a delirium. Considering that a child may become an orphan as soon as it has seen the light, and that in that case, if not subject to government, it must perish, they would explain it away, I think, and contradict themselves, in the case of guardian

and ward. In the case of master and apprentice, I would not take upon me to decide: it may have been their meaning to proscribe that relation altogether;—at least, this may have been the case, as soon as the repugnancy between that institution and this oracle was pointed out; for the professed object and destination of it is to be the standard of truth and falsehood, of right and wrong, in everything that relates to government. But to this standard, and to this article of it, the subjection of the apprentice to the master is flatly and diametrically repugnant. If it do not proscribe and exclude this inequality, it proscribes none: if it do not do this mischief, it does nothing.

So, again, in the case of husband and wife. Amongst the other abuses which the oracle was meant to put an end to, may, for aught I can pretend to say, have been the institution of marriage. For what is the subjection of a small and limited number of years, in comparison with the subjection of a whole life? Yet without subjection and inequality, no such institution can by any possibility take place; for of two contradictory wills, both cannot take effect at the same time.

The same doubts apply to the case of master and hired servant. Better a man should starve than hire himself;—better half the species starve, than hire itself out to service. For, where is the compatibility between liberty and servitude? How can liberty and servitude subsist in the same person? What good citizen is there, that would hesitate to die for liberty? And, as to those who are not good citizens, what matters it whether they live or starve? Besides that every man who lives under this constitution being equal in rights, equal in all sorts of rights, is equal in respect to rights of property. No man, therefore, can be in any danger of starving—no man can have so much as that motive, weak and inadequate as it is, for hiring himself out to service.

Sentence 2. *Social distinctions cannot be founded but upon common utility.*—This proposition has two or three meanings. According to one of them, the proposition is notoriously false: according to another, it is in contradiction to the four propositions that preceded it in the same sentence.

What is meant by *social distinctions?* what is meant by *can?* what is meant by *founded?*

What is meant by *social distinctions?*—Distinctions not respecting equality?—then these are nothing to the purpose. Distinctions in respect of equality?—then, consistently with the preceding propositions in this same article, they can have no exis-

tence: not existing, they cannot be founded upon anything. The distinctions above exemplified, are they in the number of the social distinctions here intended? Not one of them (as we have been seeing) but has subjection—not one of them but has inequality for its very essence.

What is meant by *can*—"can not be founded but upon common utility"? Is it meant to speak of what *is* established, or of what *ought to be established?* Does it mean that no social distinctions, but those which it approves as having the foundation in question, are established anywhere? or simply that none such *ought to be* established anywhere? or that, if the establishment or maintenance of such dispositions by the laws be attempted anywhere, such laws ought to be treated as void, and the attempt to execute them to be resisted? For such is the venom that lurks under such words as *can* and *can not*, when set up as a check upon the laws, —they contain all these three so perfectly distinct and widely different meanings. In the first, the proposition they are inserted into refers to practice, and makes appeal to observation—to the observation of other men, in regard to a matter of fact: in the second, it is an appeal to the approving faculty of others, in regard to the same matter of fact: in the third, it is no appeal to anything, or to anybody, but a violent attempt upon the liberty of speech and action on the part of others, by the terrors of anarchical despotism, rising up in opposition to the laws: it is an attempt to lift the dagger of the assassin against all individuals who presume to hold an opinion different from that of the orator or the writer, and against all governments which presume to support any such individuals in any such presumption. In the first of these imports, the proposition is perfectly harmless: but it is commonly so untrue, so glaringly untrue, so palpably untrue, even to drivelling, that it must be plain to everybody it can never have been the meaning that was intended.

In the second of these imports, the proposition may be true or not, as it may happen, and at any rate is equally innocent: but it is such as will not answer the purpose; for an opinion that leaves others at liberty to be of a contrary one, will never answer the purpose of the passions: and if this had been the meaning intended, not this ambiguous phraseology, but a clear and simple one, presenting this meaning and no other, would have been employed. The third, which may not improperly be termed the *ruffian-like* or threatening import, is the meaning intended to be presented to the weak and timid, while the two innocent ones, of which one may even be reasonable, are held up before it as a veil

to blind the eyes of the discerning reader, and screen from him the mischief that lurks beneath.

Can and *can not*, when thus applied—*can* and *can not*, when used instead of *ought* and *ought not*—*can* and *can not*, when applied to the binding force and effect of laws—not of the acts of individuals, nor yet of the acts of subordinate authority, but of the acts of the supreme government itself, are the disguised cant of the assassin: after them there is nothing but *do him*, betwixt the preparation for murder and the attempt. They resemble that instrument which in outward appearance is but an ordinary staff, but which within that simple and innocent semblance conceals a dagger. These are the words that speak daggers—if daggers can be spoken; they speak daggers, and there remains nothing but to use them.

Look where I will, I see but too many laws, the alteration or abolition of which would, in my poor judgment, be a public blessing. I can conceive some,—to put extreme and scarcely exampled cases,—to which I might be inclined to oppose resistance, with a prospect of support such as promised to be effectual. But to talk of what the law, the supreme legislature of the country, acknowledged as such, *can* not do!—to talk of a *void* law as you would of a *void* order or a *void* judgment!—The very act of bringing such words into conjunction is either the vilest of nonsense, or the worst of treasons:—treason, not against one branch of the sovereignty, but against the whole: treason, not against this or that government, but against *all* governments.

Article II.—*The end in view of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.*

Sentence 1. The end in view of every political association, is the preservation of the natural and imprescriptible rights of man.

More confusion—more nonsense,—and the nonsense, as usual, dangerous nonsense. The words can scarcely be said to have a meaning: but if they have, or rather if they had a meaning, these would be the propositions either asserted or implied:—

1. That there are such things as rights anterior to the establishment of governments: for natural, as applied to rights, if it mean anything, is meant to stand in opposition to *legal*—to such rights as are acknowledged to owe their existence to government, and are consequently posterior in their date to the establishment of government.

2. That these rights *can not* be abrogated by government; for

can not is implied in the form of the word imprescriptible, and the sense it wears when so applied, is the cut-throat sense above explained.

3. That the governments that exist derive their origin from formal associations, or what are now called *conventions:* associations entered into by a partnership contract, with all the members for partners,—entered into at a day prefixed, for a predetermined purpose, the formation of a new government where there was none before (for as to formal meetings holden under the control of an existing government, they are evidently out of question here) in which it seems again to be implied in the way of inference, though a necessary and an unavoidable inference, that all governments (that is, self-called governments, knots of persons exercising the powers of government) that have had any other origin than an association of the above description, are illegal, that is, no governments at all; resistance to them, and subversion of them, lawful and commendable; and so on.

Such are the notions implied in this first part of the article. How stands the truth of things? That there are no such things as natural rights—no such things as rights anterior to the establishment of government—no such things as natural rights opposed to, in contradistinction to, legal: that the expression is merely figurative; that when used, in the moment you attempt to give it a literal meaning, it leads to error, and to that sort of error that leads to mischief—to the extremity of mischief.

We know what it is for men to live without government—and living without government, to live without rights: we know what it is for men to live without government, for we see instances of such a way of life—we see it in many savage nations, or rather races of mankind; for instance, among the savages of New South Wales, whose way of living is so well known to us: no habit of obedience, and thence no government—no government, and thence no laws,—no laws, and thence no such things as rights—no security—no property: liberty, as against regular control, the control of laws and government—perfect; but as against all irregular control, the mandates of stronger individuals, none. In this state, at a time earlier than the commencement of history—in this same state, judging from analogy, we, the inhabitants of the part of the globe we call Europe, were;—no government, consequently no rights: no rights, consequently no property—no legal security—no legal liberty: security not more than belongs to beasts—forecast and sense of insecurity keener—consequently in point of happiness below the level of the brutal race.

In proportion to the want of happiness resulting from the want of rights, a reason exists for wishing that there were such things as rights. But reasons for wishing there were such things as rights, are not rights ;—a reason for wishing that a certain right were established, is not that right—want is not supply—hunger is not bread.

That which has no existence cannot be destroyed—that which cannot be destroyed cannot require anything to preserve it from destruction. *Natural rights* is simple nonsense : natural and imprescriptible rights, rhetorical nonsense,—nonsense upon stilts. But this rhetorical nonsense ends in the old strain of mischievous nonsense : for immediately a list of these pretended natural rights is given, and those are so expressed as to present to view legal rights. And of these rights, whatever they are, there is not, it seems, any one of which any government *can*, upon any occasion whatever, abrogate the smallest particle.

So much for terrorist language. What is the language of reason and plain sense upon this same subject? That in proportion as it is *right* or *proper*, *i. e.* advantageous to the society in question, that this or that right—a right to this or that effect—should be established and maintained, in that same proportion it is *wrong* that it should be abrogated : but, that as there is no *right*, which ought not to be maintained so long as it is upon the whole advantageous to society that it should be maintained, so there is no right which, when the abolition of it is advantageous to society, should not be abolished. To know whether it would be more for the advantage of society that this or that right should be maintained or abolished, the time at which the question about maintaining or abolishing is proposed, must be given, and the circumstances under which it is proposed to maintain or abolish it ; the right itself must be specifically described, not jumbled with an undistinguishable heap of others, under any such vague general terms as property, liberty, and the like.

One thing, in the midst of all this confusion, is but too plain. They know not of what they are talking under the name of natural rights, and yet they would have them imprescriptible—proof against all the power of the laws—pregnant with occasions summoning the members of the community to rise up in resistance against the laws. What, then, was their object in declaring the existence of imprescriptible rights, and without specifying a single one by any such mark as it could be known by? This, and no other—to excite and keep up a spirit of resistance to all laws—a spirit of insurrection against all governments—against the govern-

ments of all other nations instantly,—against the government of their own nation—against the government they themselves were pretending to establish—even that, as soon as their own reign should be at an end. In us is the perfection of virtue and wisdom: in all mankind besides, the extremity of wickedness and folly. Our will shall consequently reign without control, and for ever: reign now, we are living—reign after we are dead.

All nations—all future ages—shall be, for they are predestined to be, our slaves.

Future governments will not have honesty enough to be trusted with the determination of what rights shall be maintained, what abrogated—what laws kept in force, what repealed. Future subjects (I should say future citizens, for French government does not admit of subjects) will not have wit enough to be trusted with the choice whether to submit to the determination of the government of their time, or to resist it. Governments, citizens—all to the end of time—all must be kept in chains.

Such are their maxims—such their premises: for it is by such premises only that the doctrine of imprescriptible rights and unrepealable laws can be supported.

What is the real source of these imprescriptible rights—these unrepealable laws? Power turned blind by looking from its own height: self-conceit and tyranny exalted into insanity. No man was to have any other man for a servant, yet all men were for ever to be *their* slaves. Making laws with imposture in their mouths, under pretence of declaring them—giving for laws anything that came uppermost, and these unrepealable ones, on pretence of finding them ready made. Made by what? Not by God—they allow of none; but by their goddess, Nature.

The origination of governments from a contract is a pure fiction, or, in other words, a falsehood. It never has been known to be true in any instance; the allegation of it does mischief, by involving the subject in error and confusion, and is neither necessary nor useful to any good purpose.

All governments that we have any account of have been gradually established by habit, after having been formed by force; unless in the instance of governments formed by individuals who have been emancipated, or have emancipated themselves from governments already formed, the governments under which they were born—a rare case, and from which nothing follows with regard to the rest. What signifies it how governments are formed? Is it the less proper—the less conducive to the happiness of society—that the happiness of society should be the one

object kept in view by the members of the government in all their measures? Is it the less the interest of men to be happy—less to be wished that they may be so—less the moral duty of their governors to make them so, so far as they can, at Magadore than at Philadelphia?

Whence is it, but from government, that contracts derive their binding force? Contracts came from government, not government from contracts. It is from the habit of enforcing contracts, and seeing them enforced, that governments are chiefly indebted for whatever disposition they have to observe them.

Sentence 2. These rights, [these imprescriptible as well as natural rights,] are liberty, property, security, and resistance to oppression.

Observe the extent of these pretended rights, each of them belonging to every man, and all of them without bounds. Unbounded liberty; that is, amongst other things, the liberty of doing or not doing on every occasion whatever each man pleases:—Unbounded property; that is, the right of doing with everything around him, (with every *thing* at least, if not with every person,) whatsoever he pleases; communicating that right to anybody, and withholding it from anybody:—Unbounded security; that is, security for such his liberty, for such his property, and for his person, against every defalcation that can be called for on any account in respect of any of them:—Unbounded resistance to oppression; that is, unbounded exercise of the faculty of guarding himself against whatever unpleasant circumstance may present itself to his imagination or his passions under that name. Nature, say some of the interpreters of the pretended law of nature—nature gave to each man a right to everything; which is, in effect, but another way of saying—nature has given no such right to anybody; for in regard to most rights, it is as true that what is every man's right is no man's right, as that what is every man's business is no man's business. Nature gave—gave to every man a right to everything:—be it so—true; and hence the necessity of human government and human laws, to give to every man his own right, without which no right whatsoever would amount to anything. Nature gave every man a right to everything before the existence of laws, and in default of laws. This nominal universality and real nonentity of right, set up provisionally by nature in default of laws, the French oracle lays hold of, and perpetuates it under the law and in spite of laws. These anarchical rights which nature had set out with, democratic art attempts to rivet down, and declares indefeasible.

Unbounded liberty—I must still say unbounded liberty ;—for though the next article but one returns to the charge, and gives such a definition of liberty as seems intended to set bounds to it, yet in effect the limitation amounts to nothing ; and when, as here, no warning is given of any exception in the texture of the general rule, every exception which turns up is, not a confirmation but a contradiction of the rule :—liberty, without any pre-announced or intelligible bounds ; and as to the other rights, they remain unbounded to the end : rights of man composed of a system of contradictions and impossibilities.

In vain would it be said, that though no bounds are here assigned to any of these rights, yet it is to be understood as taken for granted, and tacitly admitted and assumed, that they are to have bounds ; viz., such bounds as it is understood will be set them by the laws. Vain, I say, would be this apology ; for the supposition would be contradictory to the express declaration of the article itself, and would defeat the very object which the whole declaration has in view. It would be self-contradictory, because these rights are, in the same breath in which their existence is declared, declared to be imprescriptible ; and imprescriptible, or, as we in England should say, indefeasible, means nothing unless it exclude the interference of the laws.

It would be not only inconsistent with itself, but inconsistent with the declared and sole object of the declaration, if it did not exclude the interference of the laws. It is against the laws themselves, and the laws only, that this declaration is levelled. It is for the hands of the legislator, and all legislators, and none but legislators, that the shackles it provides are intended,—it is against the apprehended encroachments of legislators that the rights in question, the liberty and property, and so forth, are intended to be made secure,—it is to such encroachments, and damages, and dangers, that whatever security it professes to give has respect. Precious security for unbounded rights against legislators, if the extent of those rights in every direction were purposely left to depend upon the will and pleasure of those very legislators !

Nonsensical or nugatory, and in both cases mischievous : such is the alternative.

So much for all these pretended indefeasible rights in the lump : their inconsistency with each other, as well as the inconsistency of them in the character of indefeasible rights with the existence of government and all peaceable society, will appear still more plainly when we examine them one by one.

1. *Liberty*, then, is imprescriptible—incapable of being taken

away—out of the power of any government ever to take away: liberty,—that is, every branch of liberty—every individual exercise of liberty; for no line is drawn—no distinction—no exception made. What these instructors as well as governors of mankind appear not to know, is, that all rights are made at the expense of liberty—all laws by which rights are created or confirmed. No right without a correspondent obligation. Liberty, as against the coercion of the law, may, it is true, be given by the simple removal of the obligation by which that coercion was applied—by the simple repeal of the coercing law. But as against the coercion applicable by individual to individual, no liberty can be given to one man but in proportion as it is taken from another. All coercive laws, therefore, (that is, all laws but constitutional laws, and laws repealing or modifying coercive laws,) and in particular all laws creative of liberty, are, as far as they go, abrogative of liberty. Not here and there a law only—not this or that possible law, but almost all laws, are therefore repugnant to these natural and imprescriptible rights: consequently null and void, calling for resistance and insurrection, and so on, as before.

Laws creative of rights of property are also struck at by the same anathema. How is property given? By restraining liberty; that is, by taking it away so far as is necessary for the purpose. How is your house made yours? By debarring every one else from the liberty of entering it without your leave. But,

2. *Property.* Property stands second on the list,—proprietary rights are in the number of the natural and imprescriptible rights of man—of the rights which a man is not indebted for to the laws, and which cannot be taken from him by the laws. Men—that is, every man (for a general expression given without exception is an universal one) has a right to property, to proprietary rights, *a right which* cannot be taken away from him by the laws. To proprietary rights. Good: but in relation to what subject? for as to proprietary rights—without a subject to which they are referable—without a subject in or in relation to which they can be exercised—they will hardly be of much value, they will hardly be worth taking care of, with so much solemnity. In vain would all the laws in the world have ascertained that I have a right to something. If this be all they have done for me—if there be no specific subject in relation to which my proprietary rights are established, I must either take what I want without right, or starve. As there is no such subject specified with relation to each man, or to any man, (indeed how could there be?) the necessary inference (taking the passage literally) is, that every man has all

manner of proprietary rights with relation to every subject of property without exception: in a word, that every man has a right to everything. Unfortunately, in most matters of property, what is every man's right is no man's right; so that the effect of this part of the oracle, if observed, would be, not to establish property, but to extinguish it—to render it impossible ever to be revived: and this is one of the rights declared to be imprescriptible.

It will probably be acknowledged that, according to this construction, the clause in question is equally ruinous and absurd:—and hence the inference may be, that this was not the construction—this was not the meaning in view. But by the same rule, every possible construction which the words employed can admit of, might be proved not to have been the meaning in view: nor is this clause a whit more absurd or ruinous than all that goes before it, and a great deal of what comes after it. And, in short, if this be not the meaning of it, what is? Give it a sense—give it any sense whatever,—it is mischievous:—to save it from that imputation, there is but one course to take, which is to acknowledge it to be nonsense.

Thus much would be clear, if anything were clear in it, that according to this clause, whatever proprietary rights, whatever property a man once has, no matter how, being imprescriptible, can never be taken away from him by any law; or of what use or meaning is the clause? So that the moment it is acknowledged in relation to any article, that such article is my property, no matter how or when it became so, that moment it is acknowledged that it can never be taken away from me: therefore, for example, all laws and all judgments, whereby anything is taken away from me without my free consent—all taxes, for example, and all fines—are void, and, as such, call for resistance and insurrection, and so forth, as before.

3. *Security.* Security stands the third on the list of these natural and imprescriptible rights which laws did not give, and which laws are not in any degree to be suffered to take away. Under the head of security, liberty might have been included; so likewise property: since security for liberty, or the enjoyment of liberty, may be spoken of as a branch of security:—security for property, or the enjoyment of proprietary rights, as another. Security for person is the branch that seems here to have been understood:—security for each man's person, as against all those hurtful or disagreeable impressions (exclusive of those which consist in the mere disturbance of the enjoyment of liberty,) by which a man is affected in his person; loss of life—loss of limbs—loss of

the use of limbs—wounds, bruises, and the like. All laws are null and void, then, which on any account, or in any manner seek to expose the person of any man to any risk—which appoint capital or other corporal punishment—which expose a man to personal hazard in the service of the military power against foreign enemies, or in that of the judicial power against delinquents:—all laws which, to preserve the country from pestilence, authorize the immediate execution of a suspected person, in the event of his transgressing certain bounds.

4. *Resistance to oppression.* Fourth and last in the list of natural and imprescriptible rights, resistance to oppression—meaning, I suppose, the right to resist oppression. What is oppression? Power misapplied to the prejudice of some individual. What is it that a man has in view when he speaks of oppression? Some exertion of power which he looks upon as misapplied to the prejudice of some individual—to the producing on the part of such individual some suffering, to which (whether as forbidden by the law or otherwise) we conceive he ought not to have been subjected. But against everything that can come under the name of oppression, provision has been already made, in the manner we have seen, by the recognition of the three preceding rights; since no oppression can fall upon a man, which is not an infringement of his rights in relation to liberty, rights in relation to property, or rights in relation to security, as above described. Where, then, is the difference?—to what purpose this fourth clause after the three first? To this purpose: the mischief they seek to prevent, the rights they seek to establish, are the same; the difference lies in the nature of the remedy endeavoured to be applied. To prevent the mischief in question, the endeavour of the three former clauses is, to tie the hand of the legislator and his subordinates by the fear of nullity, and the remote apprehension of general resistance and insurrection. The aim of this fourth clause is, to raise the hand of the individual concerned, to prevent the apprehended infraction of his rights at the moment when he looks upon it as about to take place.

Whenever you are about to be oppressed, you have a right to resist oppression: whenever you conceive yourself to be oppressed, conceive yourself to have a right to make resistance, and act accordingly. In proportion as a law of any kind,—any act of power, supreme or subordinate, legislative, administrative, or judicial,—is unpleasant to a man, especially if, in consideration of such its unpleasantness, his opinion is, that such act of power ought not to have been exercised, he of course looks upon it as

oppression: as often as anything of this sort happens to a man—as often as anything happens to a man to inflame his passions,—this article, for fear his passions should not be sufficiently inflamed of themselves, sets itself to work to blow the flame, and urges him to resistance. Submit not to any decree or other act of power, of the justice of which you are not yourself perfectly convinced. If a constable call upon you to serve in the militia, shoot the constable and not the enemy;—if the commander of a press-gang trouble you, push him into the sea—if a bailiff, throw him out of the window. If a judge sentence you to be imprisoned or put to death, have a dagger ready, and take a stroke first at the judge.—ii. 497-504.

Article IV.—*Liberty consists in being able to do that which is not hurtful to another, and therefore the exercise of the natural rights of each man has no other bounds than those which ensure to the other members of the society the enjoyment of the same rights. These bounds cannot be determined but by the law.*

In this article, three propositions are included:—

Proposition 1. Liberty consists in being able to do that which is not hurtful to another. What! in that, and nothing else? Is not the liberty of doing mischief liberty? If not, what is it? and what word is there for it in the language, or in any language by which it can be spoken of? How childish, how repugnant to the ends of language, is this perversion of language!—to attempt to confine a word in common and perpetual use, to an import to which nobody ever confined it before, or will continue to confine it! And so I am never to know whether I am at liberty or not to do, or to omit doing one act, till I see whether or no there is anybody that may be hurt by it—till I see the whole extent of all its consequences? Liberty! what liberty?—as against what power? as against coercion from what source? As against coercion issuing from the law?—then, to know whether the law have left me at liberty in any respect in relation to any act, I am to consult, not the words of the law, but my own conception of what would be the consequences of the act. If among these consequences there be a single one by which anybody would be hurt, then, whatever the law says to me about it, I am not at liberty to do it. I am an officer of justice, appointed to superintend the execution of punishments ordered by justice: if I am ordered to cause a thief to be whipped,—to know whether I am at liberty to cause the sentence to be executed, I must know whether whipping would hurt the thief: if it would, then I am not at liberty to

whip the thief—to inflict the punishment which it is my duty to inflict.

Proposition 2. And therefore the exercise of the natural rights of each man has no other bounds than those which ensure to the other members of the society the enjoyment of those same rights. Has no other bounds? Where is it that it has no other bounds? In what nation,—under what government? If under any government, then the state of legislation under that government is in a state of absolute perfection. If there be no such government, then, by a confession necessarily implied, there is no nation upon earth in which this definition is conformable to the truth.

Proposition 3. These bounds cannot be determined but by the law. More contradiction, more confusion. What then?—this liberty, this right,—which is one of four rights that existed before laws, and will exist in spite of all that laws can do,—owes all the boundaries it has, all the extent it has, to the laws. Till you know what the laws say to it, you do not know what there is of it, nor what account to give of it, and yet it existed, and that in full force and vigour, before there were any such things as laws; and so will continue to exist, and that for ever, in spite of anything which laws can do to it. Still the same inaptitude of expressions—still the same confusion of that which it is supposed *is*, with that which it is conceived ought to be.

What says plain truth upon this subject? What is the sense most approaching to this nonsense?

The liberty which the law *ought* to allow of, and leave in existence,—leave uncoerced, unremoved,—is the liberty which concerns those acts only, by which, if exercised, no damage would be done to the community upon the whole; that is, either no damage at all, or none but what promises to be compensated by at least equal benefit.

Accordingly, the exercise of the rights allowed to and conferred upon each individual, ought to have no other bounds set to it by the law, than those which are necessary to enable it to maintain every other individual in the possession and exercise of such rights as it is consistent with the greatest good of the community that he should be allowed. The marking out of these bounds ought not to be left to anybody but the legislator acting as such—that is to him or them who are acknowledged to be in possession of the sovereign power: that is, it ought not to be left to the occasional and arbitrary declaration of any individual, whatever share he may possess of subordinate authority.

The word *autrui*—another, is so loose,—making no distinction

between the community and individuals,—as, according to the most natural construction, to deprive succeeding legislators of all power of repressing, by punishment or otherwise, any acts by which no individual sufferers are to be found; and to deprive them beyond a doubt of all power of affording protection to any man, woman, or child, against his or her own weakness, ignorance, or imprudence.

ARTICLE V.—*The law has no right to forbid any other actions than such as are hurtful to society. Whatever is not forbidden by the law, cannot be hindered; nor can any individual be compelled to do that which the law does not command.*

Sentence 1. The law has no right (*n'a le droit*) to forbid any other actions than such as are hurtful to society. The law has no right (*n'a le droit*, not *ne peut pas.*) This, for once, is free from ambiguity. Here the mask of ambiguity is thrown off. The avowed object of this clause is to preach constant insurrection, to raise up every man in arms against every law which he happens not to approve of. For, take any such action you will, if the law have no right to forbid it, a law forbidding it is null and void, and the attempt to execute it an oppression, and resistance to such attempt, and insurrection in support of such resistance, legal, justifiable, and commendable.

To have said that no law ought to forbid any act that is not of anature prejudicial to society, would have answered every good purpose, but would not have answered the purpose which is intended to be answered here.

A government which should fulfil the expectations here held out, would be a government of absolute perfection. The instance of a government fulfilling these expectations, never has taken place, nor, till men are angels, ever can take place. Against every government which fails in any degree of fulfilling these expectations, then, it is the professed object of this manifesto to excite insurrection: here, as elsewhere, it is therefore its direct object to excite insurrection at all times against every government whatsoever.

Sentence 2. Whatever is not forbidden by the law, cannot be hindered, nor can any individual be compelled to do what the law does not command.

The effect of this law, for want of the requisite exceptions or explanations, is to annihilate, for the time-being and for ever, all powers of command: all power, the exercise of which consists in the issuing and enforcing obedience to particular and occasional

commands ; domestic power, power of the police, judicial power, military power, power of superior officers, in the line of civil administration, over their subordinates. If I say to my son, Do not mount that horse, which you are not strong enough to manage ; if I say to my daughter, Do not go to that pond, where there are young men bathing ; they may set me at defiance, bidding me show them where there are anything about mounting unruly horses, or going where there are young men bathing, in the laws. By the same clause, they may each of them justify themselves in turning their backs upon the lesson I have given them ; while my apprentice refuses to do the work I have given him ; and my wife, instead of providing the meals I had desired her to provide for ourselves and family, tells me she thinks fit to go and dine elsewhere. In the existing order of things, under any other government than that which was here to be organized, whatever is commanded or forbidden in virtue of a power which the law allows of and recognises, is virtually and in effect commanded and forbidden by the law itself, since, by the support it gives to the persons in question in the exercise of their respective authorities, it shows itself to have adopted those commands, and considered them as its own before they are issued, and that whatever may be the purport of them, so long as they are confined within the limits it has marked out. But all these existing governments being fundamentally repugnant to the rights of man, are null and void, and incapable of filling up this or any other gap in the texture of the new code. Besides, this right of not being hindered from doing anything which the law itself has not forbidden, nor compelled to do anything which it has not commanded, is an article of natural, unalienable, sacred, and imprescriptible right, over which political laws have no sort of power ; so that the attempt to fill up the gap, and to establish any such power of commanding or forbidding what is not already commanded and forbidden by the law, would be an act of usurpation, and all such powers so attempted to be established, null and void. How also can any such powers subsist in a society of which all the members are free and equal in point of rights ?

Admit, however, that room is given for the creation of the powers in question by the spirit, though not by the letter of this clause—what follows ? That in proportion as it is harmless, it is insignificant, and incapable of answering its intended purpose. This purpose is to protect individuals against oppressions, to which they might be subjected by other individuals possessed of powers created by the law, in the exercise or pretended exercise of those

powers. But if these powers are left to the determination of succeeding and (according to the doctrine of this code) inferior legislatures, and may be of any nature and to any extent which these legislatures may think fit to give them,—what does the protection here given amount to, especially as against such future legislatures, for whose hands all the restraints which it is the object of the declaration to provide are intended? Mischievous or nugatory is still the alternative.

The employment of the improper word *can*, instead of the proper word *shall*, is not unworthy of observation. Shall is the language of the legislator who knows what he is about, and aims at nothing more :—can, when properly employed in a book of law, is the language of the private commentator or expositor, drawing inferences from the text of the law—from the acts of the legislator, or what takes the place of the acts of the legislator—the practice of the courts of justice.—ii. 505-507.

Article XVI.—*Every society in which the warranty of rights is not assured,* [*" la garantie des droits n'est pas assurée,"*] *nor the separation of powers determined, has no constitution.*

Here we have an exhibition : self-conceit inflamed to insanity —legislators turned into turkey-cocks—the less important operation of constitution-making, interrupted for the more important operation of bragging. Had the whole human species, according to the wish of the tyrant, but one neck, it would find in this article a sword designed to sever it.

This constitution,—the blessed constitution, of which this matchless declaration forms the base—the constitution of France —is not only the most admirable constitution in the world, but the only one. That no other country but France has the happiness of possessing the sort of thing, whatever it be, called a constitution, is a meaning sufficiently conveyed. This meaning the article must have, if it have any : for other meaning, most assuredly it has none.

Every society in which the warranty of rights is not assured (*toute société dans laquelle la garantie des droits n'est pas assurée,*) is, it must be confessed, most rueful nonsense : but if the translation were not exact, it would be unfaithful : and if not nonsensical, it would not be exact.

Do you ask, has the nation I belong to such a thing as a constitution belonging to it? If you want to know, look whether a declaration of rights, word for word the same as this, forms part of its code of laws ; for by this article, what is meant to be in-

sinuated, not expressed (since by nonsense nothing is expressed,) is the necessity of having a declaration of rights like this set by authority in the character of an introduction at the head of the collection of its laws.

As to the not absolutely nonsensical, but only very obscure clause, about a society's having "the separation of powers determined," it seems to be the result of a confused idea of an intended application of the old maxim, *divide et impera:* the governed are to have the governors under their governance, by having them divided among themselves. A still older maxim, and, supposing both maxims applied to this one subject, I am inclined to think a truer one, is, that a house divided against itself cannot stand.

Yet on the existence of two perfectly independent and fighting sovereignties, or of three such fighting sovereignties, (the supposed state of things in Britain seems here to be the example in view,) the perfection of good government, or at least of whatever approach to good government can subsist without the actual adoption *in terminis* of a declaration of rights such as this, is supposed to depend. Hence, though Britain have no such thing as a constitution belonging to it at present, yet, if during a period of any length, five or ten years for example, it should ever happen that neither House of Commons nor House of Lords had any confidence in the King's Ministers, nor any disposition to endure their taking the lead in legislation (the House of Commons being all the while, as we must suppose, peopled by universal suffrage,) possibly in such case, for it were a great deal too much to affirm, Britain might be so far humoured as to be allowed to suppose herself in possession of a sort of thing, which, though of inferior stuff, might pass under the name of a constitution, even without having this declaration of rights to stand at its head.

That Britain possesses at present anything that can bear that name, has, by Citizen Paine, *following*, or *leading*, (I really remember not, nor is it worth remembering,) at any rate *agreeing* with this declaration of rights, been formally denied.

According to general import, supported by etymology, by the word *constitution*, something *established*, something *already* established, something possessed of *stability*, something that has given *proofs* of stability, seems to be implied. What shall we say, if of this most magnificent of all boasts, not merely the simple negative, but the direct converse should be true? and if instead of France being the only country which has a constitution, France should be the only country that has none! Yet if government depend upon obedience—the stability of government upon

the permanence of the disposition to obedience, and the permanence of that disposition upon the duration of the habit of obedience—this most assuredly must be the case.—ii. 520–521.

GENERAL REMARKS ON THE FRENCH DECLARATION OF RIGHTS.

Ex uno, disce omnes—from this declaration of rights, learn what all other declarations of rights—of rights asserted as against government in general, must ever be,—the rights of anarchy—the order of chaos.

It is right I should continue to possess the coat I have upon my back, and so on with regard to everything else I look upon as my property, at least till I choose to part with it.

It is right I should be at liberty to do as I please—it would be better if I might be permitted to add, whether other people were pleased with what it pleased me to do or not. But as that is hopeless, I must be content with such a portion of liberty, though it is the least I can be content with, as consists in the liberty of doing as I please, subject to the exception of not doing harm to other people.

It is right I should be secure against all sorts of harm.

It is right I should be upon a par with everybody else—upon a par at least; and if I can contrive to get a peep over other people's heads, where will be the harm in it?

But if all this is right now, at what time was it ever otherwise? It is now naturally right, and at what future time will it be otherwise? It is then unalterably right for everlasting.

As it is right I should possess all these blessings, I have a right to all of them.

But if I have a right to the coat on my back, I have a right to knock any man down who attempts to take it from me.

For the same reason, if I have a right to be secure against all sorts of harm, I have a right to knock any man down who attempts to harm me.

For the same reason, if I have a right to do whatever I please, subject only to the exception of not doing harm to other people, it follows that, subject only to that exception, I have a right to knock any man down who attempts to prevent my doing anything that I please to do.

For the same reason, if I have a right to be upon a par with everybody else in every respect, it follows, that should any man

take upon him to raise his house higher than mine,—rather than it should continue so, I have a right to pull it down about his ears, and to knock him down if he attempt to hinder me.

Thus easy, thus natural, under the guidance of the selfish and anti-social passions, thus insensible is the transition from the language of utility and peace to the language of mischief. Transition, did I say?—what transition?—from right to right? The propositions are identical—there is no transition in the case. Certainly, as far as words go, scarcely any: no more than if you were to trust your horse with a man for a week or so, and he were to return it blind and lame:—it was your horse you trusted to him—it is your horse you have received again:—what you had trusted to him, you have received.

It is in England, rather than in France, that the discovery of the *rights of man* ought naturally to have taken its rise: it is we—we English, that have the better *right* to it. It is in the English language that the transition is more natural, than perhaps in most others: at any rate, more so than in the French. It is in English, and not in French, that we may change the sense without changing the word, and, like Don Quixote on the enchanted horse, travel as far as the moon, and farther, without ever getting off the saddle. One and the same word, right—right, that most enchanting of words—is sufficient for operating the fascination. The word is ours,—that magic word, which, by its single unassisted powers, completes the fascination. In its adjective shape, it is as innocent as a dove: it breathes nothing but morality and peace. It is in this shape that, passing in at the heart, it gets possession of the understanding:—it then assumes its substantive shape, and joining itself to a band of suitable associates, sets up the banner of insurrection, anarchy, and lawless violence.

It is right that men should be as near upon a par with one another in every respect as they can be made, consistently with general security: here we have it in its adjective form, synonymous with desirable, proper, becoming, consonant to general utility, and the like. I have a right to put myself upon a par with everybody in every respect: here we have it in its *substantive* sense, forming with the other words a phrase equivalent to this,—wherever I find a man who will not let me put myself on a par with him in every respect, it is right, and proper, and becoming, that I should knock him down, if I have a mind to do so, and if that will not do, knock him on the head, and so forth.

The French language is fortunate enough not to possess this

mischievous abundance. But a Frenchman will not be kept back from his purpose by a want of words: the want of an adjective composed of the same letters as the substantive *right*, is no loss to him. Is, has been, ought to be, shall be, can,—all are put for one another—all are pressed into the service—all made to answer the same purposes. By this inebriating compound, we have seen all the elements of the understanding confounded, every fibre of the heart inflamed, the lips prepared for every folly, and the hand for every crime.

Our right to this precious discovery, such as it is, of the rights of man, must, I repeat it, have been prior to that of the French. It has been seen how peculiarly rich we are in materials for making it. *Right*, the substantive *right*, is the child of law: from *real* laws come *real* rights; but from *imaginary* laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come *imaginary* rights, a bastard brood of monsters, "gorgons and chimæras dire." And thus it is, that from *legal rights*, the offspring of law and friends of peace, come *anti-legal rights*, the mortal enemies of law, the subverters of government, and the assassins of security.

Will this antidote to French poisons have its effect?—will this preservative for the understanding and the heart against the fascination of sounds, find lips to speak it? This, in point of speedy or immediate efficacy at least, is almost too much to hope for. Alas! how dependent are opinions upon sound! Who shall break the chains which bind them together? By what force shall the associations between words and ideas be dissolved—associations coeval with the cradle—associations to which every book and every conversation give increased strength? by what authority shall this original vice in the structure of language be corrected? How shall a word which has taken root in the vitals of a language be expelled? By what means shall a word in continual use be deprived of half its signification? The language of plain strong sense is difficult to learn; the language of smooth nonsense is easy and familiar. The one requires a force of attention capable of stemming the tide of usage and example; the other requires nothing but to swim with it.

It is for education to do what can be done; and in education is, though unhappily the slowest, the surest as well as earliest resource. The recognition of the nothingness of the laws of nature, and the rights of man that have been grounded on them, is a branch of knowledge of as much importance to an Englishman, though a negative one, as the most perfect acquaintance that can be formed with the existing laws of England.

It must be so:—Shakspere, whose plays were filling English hearts with rapture, while the drama of France was not superior to that of Caffraria,—Shakspere, who had a key to all the passions and all the stores of language, could never have let slip an instrument of delusion of such superior texture. No: it is not possible that the rights of man—the natural, pre-adamitical, ante-legal, and anti-legal rights of man—should have been unknown to, have been unemployed by Shakspere. How could the Macbeths, and the Iagos, do without them? They present a cloak for every conspiracy—they hold out a mask for every crime;—they are every villain's armoury—every spendthrift's treasury.

But if the English were the first to bring the rights of man into the closet from the stage, it is to the stage and the closet that they have confined them. It was reserved for France—for France in her days of degradation and degeneration—in those days, in comparison with which the worst of her days of fancied tyranny were halcyon ones—to turn debates into tragedies, and the senate into a stage.

The mask is now taken off, and the anarchist may be known by the language which he uses.

He will be found *asserting rights*, and acknowledging them at the same time not to be recognised by government. Using, instead of *ought* and *ought not*, the words *is* or *is not*—*can* or *can not*.

In former times, in the times of Grotius and Puffendorf, these expressions were little more than improprieties in language, prejudicial to the growth of knowledge: at present, since the French Declaration of Rights has adopted them, and the French Revolution displayed their import by a practical comment,—the use of them is already a *moral crime*, and not undeserving of being constituted a legal crime, as hostile to the public peace.—ii. 522-524.

OUR " MATCHLESS CONSTITUTION." *

The constitution has some good points; it has some bad ones: it gives facility, and, until reform—radical reform—shall have been accomplished, security and continual increase to waste, depredation, oppression, and corruption in every department, and in every variety of shape.

Now, in their own name respectively, waste, depredation, op-

* These remarks are from " The Book of Fallacies," published in 1824.

pression, corruption, cannot be toasted: gentlemen would not cry, Waste for ever! Depredation for ever! Oppression for ever! Corruption for ever! But The Constitution for ever! this a man may cry, and does cry, and makes a merit of it.

Of this instrument of rhetoric, the use is at least as old as Aristotle. As old as Aristotle is even the receipt for making it; for Aristotle has himself given it: and of how much longer standing the use of it may have been, may baffle the sagacity of a Mitford to determine. How sweet are gall and honey! how white are soot and snow!

Matchless Constitution! there's your sheet-anchor! there's your true standard!—rally round the constitution;—that is, rally round waste, rally round depredation, rally round oppression, rally round corruption, rally round election terrorism, rally round imposture—imposture on the hustings, imposture in Honourable House, imposture in every judicatory.

Connected with this toasting and this boasting, is a theory, such as a Westminster or Eton boy on the sixth form, ay, or his grandmother, might be ashamed of. For, among those who are loudest in crying out theory, (as often as any attempt is made at reasoning, any appeal made to the universally-known and indisputable principles of human nature,) always may some silly sentimental theory be found.

The constitution,—why must it not be looked into?—why is it, that under pain of being *ipso facto* anarchist convict, we must never presume to look at it otherwise than with shut eyes? Because it was the work of our ancestors,—of ancestors, of legislators, few of whom could so much as read, and those few had nothing before them that was worth the reading. First theoretical supposition, *wisdom of barbarian ancestors.*

When from their ordinary occupation, their order of the day, the cutting of one another's throats, or those of Welshmen, Scotchmen, or Irishmen, they could steal now and then a holiday, how did they employ it? In cutting Frenchmen's throats in order to get their money: this was active virtue:—leaving Frenchmen's throats uncut, was indolence, slumber, inglorious ease. Second theoretical supposition, *virtue of barbarian ancestors.*

Thus fraught with habitual wisdom and habitual virtue, they sat down and devised; and setting before them the best ends, and pursuing those best ends by the best means, they framed—in outline at any rate—they planned and executed our Matchless Constitution—the constitution as it stands: and may it for ever stand!

Planned and executed? On what occasion? on none. At what place? at none. By whom? by nobody.

At no time? O yes, says everything-as-it-should-be Blackstone. O yes, says Whig after Whig, after the charming commentator; anno Domini 1660, then it is that it was in its perfection, about fourteen years before James the Second mounted the throne with a design to govern in politics as they do in Morocco, and in religion as they do at Rome; to govern without parliament, or in spite of parliament: a state of things for which, at this same era of perfection, a preparation was made by a parliament, which being brought into as proper a state of corruption as if Lord Castlereagh had had the management of it, was kept on foot for several years together, and would have been kept a-foot till the whole system of despotism had been settled, but for the sham Popish Plot by which the fortunate calumny and subornation of the Whigs defeated the bigotry and tyranny of the Tories.—ii. 442–443.

The English constitution has its good points, and it has its bad points. The good points are—those which have been preserved in America with improvement and increase. The bad points are—those which it has in common with Turkey, with Russia, with Spain, with Austria, with Prussia; with that country from which the Guelphs came, and to which they may perhaps return. The bad points cannot very easily be defended one by one: they may with perfect ease be defended all together: and this is what is always done, although not always meant, as often as a man joins in the parrot cry of Constitution! Glorious Constitution! Matchless Constitution! Those whose sinister interest attaches them to the bad points, call, of course, for our attachment to the whole. And thus it is that, in the name of *loyalty*, our attachment is called for to whatever is most mischievous and vile.—iii. 562.

BRITAIN IN 1817.

Propose anything good; the answer is at hand:—wild, theoretical, visionary, Utopian, impracticable, dangerous, destructive, ruinous, anarchical, subversive of all governments—there you have it. Well, but in America there it *is:* and no such evil consequences—nothing but what is good, results from it. Aha! and so the United States government is your government, is it?—You are a republican then, are you?—what you want is, to

subvert this constitution of ours; the envy of nations! the pride of ages!—matchless in rotten boroughs and sinecures!—Very well: begin and set up your republic: and, in the meantime, you, who are so ready to talk of *feelings*, think what *yours* will be, when, after a few nights' lodging in the Tower, the knife of the hangman, after having rubbed off its rust upon the Spenceans, is doing its office in your bowels.—iii. 437.

Yes!—you pillage them: you oppress them: you leave them nothing that you can help leaving them: you grant them nothing, not even the semblance of sympathy: you scorn them: you insult them: for the transgression of scores, or dozens, or units, you punish them by millions; you trample on them, you defame them, you libel them: having, by all you can do or say, wound up to its highest pitch of tension the springs of provocation and irritation, you make out of that imputed, and where in any degree real, always exaggerated irritation, a ground, and the only ground you can make, for the assumption, that, supposing them treated with kindness—all their grievances redressed—relief substituted to oppression, they would find, in the very relief so experienced, an incitement—an incitement to insurrection, to outrage, to anarchy, to the destruction of the supposed new and never-yet-experienced blessing, together with every other which they ever possessed or fancied.

Levelling!—destruction of all property! Whence is it they are to learn it?—what is there they can get by it?—who is there that ever taught it them?—whose interest is it—whose ever can it be—to teach it them? How many of them are there, who would, each of them, be so eager to lose his all? The all of a peasant—to the proprietor how much less is it, than the all of a prince—the all of him whose means of livelihood are in his labour, than the all of him whose means of livelihood are in his land? Who again is it, that, in your notion at least, they are at this moment so abundantly looking to for instruction? Is it not Cobbett? With all his eccentricities, his variations, and his inconsistencies, did he ever attempt to teach them any such lesson as that of equal division of property—in other words, annihilation of it? In the whole mass of the now existing and suffering multitude, think ye that one in a score, or in a hundred, not to say a thousand, could be found, so stupid, so foolish, as either of himself or from others, to fancy that, if without other means of living he had his equal share in the whole of the land to-day, he would not, twenty to one, be starved upon it before the month were out? Oh! if the men, in whom—truly or erroneously—

they behold their friends, were not better instructors as well as better friends to them than you are, or than it is in your nature to be, long ere this would the imputation you are thus so eager to cast on them, have been as substantially grounded as it now is frivolous.—iii. 475-476.

RADICAL REFORM.

Looking at radical reform, a man sees nothing for himself or his friends to gain by it. On the contrary, he sees more or less that it seems to him he and they would lose by it. Why then should he give himself the trouble of fixing his eyes on that side? A mode much less unpleasant, and as it appears to him a sufficiently safe one, is to hear what his friends say on the subject, and to take his opinion on it from them. It is sufficiently safe; for among them he beholds those whose capacity of forming a right judgment on a question of this sort occupies the highest place in his eyes. It is not only a pleasant course, but it is the only one which he would not find intolerably irksome. By adopting the other course, he would not only have the pain of receiving disagreeable truths—truths, to himself—abstraction made of all other persons—personally disagreeable, but by doing so he would render himself disagreeable to his friends; he would perhaps lose the only society he has immediate access to—the society in which he beholds whatsoever he most values—the principal, if not the only object of his affection and respect.

As to inconvenience, either in entertaining or in deducing the opinion in question—of no such inconvenience does he expose himself to the smallest risk. No concern need he give himself on the subject: the opinion is ready found to his hands—the opinion and the sort of language—the only sort of language, that need be employed in the support of it. Wild and visionary—absurd, visionary, senseless, mischievous, destructive; by the leading hound in the pack the cry is commenced: the others have nothing to do but join in it. The principal singer has sung the solo part: the others in chorus have but to repeat it.—iii. 601.

ADDUCING THE PROSPERITY OF THE COUNTRY AS AN ARGUMENT AGAINST REFORM.

"What is the matter with you?" "What would you have?" Look at the people there, and there: think how much better off

you are than *they* are. Your prosperity and liberty are objects of envy to them ;—your institutions are the models which they endeavour to imitate. * * * * * Take any one of the orators by whom this argument is tendered, or of the sages on whom it passes for sterling : with an observation of the general wealth and prosperity of the country in his mouth, instead of a half-year's rent in his hand, let any one of his tenants propose to pay him thus in his own coin,—will he accept it?

In a court of justice, in an action for damages,—to learned ingenuity did ever any such device occur, as that of pleading assets in the hand of a third person, or in the hands of the whole country, in bar to the demand? What the largest wholesale trade is to the smallest retail, such, and more in point of magnitude, is the relief commonly sought for at the hands of the legislator, to the relief commonly sought for at the hands of the judge. What the largest wholesale trade is to the smallest retail trade, such, in point of magnitude, yea, and more, is the injustice endeavoured at by this argument when employed in the seat of legislative power, in comparison with the injustice that would be committed by deciding in conformity to it in a court of justice.

No country so wretched, so poor in every element of prosperity, in which matter for this argument might not be found.

Were the prosperity of the country ever so much greater than at present,—take for the country any country whatsoever, and for present time any time whatsoever,—neither the injustice of the argument, nor the absurdity of it, would in any the smallest degree be diminished.

Seriously and pointedly, in the character of a bar to any measure of relief—no, nor to the most trivial improvement, can it ever be employed. Suppose a bill brought in for converting an impassable road anywhere into a passable one, would any man stand up to oppose it who could find nothing better to urge against it, than the multitude and goodness of the roads we have already? No; when in the character of a serious bar to the measure in hand, be that measure what it may, an argument so palpably inapplicable is employed, it can only be for the purpose of creating a diversion—of turning aside the minds of men from the subject really in hand, to a picture which, by its beauty it is hoped, may engross the attention of the assembly, and make them forget for the moment for what purpose they came there.—ii. 431-432.

LIBEL LAW.

A libel? What is it? Answer—If I am a judge, any piece of printed paper, it would be agreeable to me to punish the man for. Is he a man I choose to punish? I make it a libel: is he a man I choose not to punish? I make it a non-libel. But is it possible that, to a man in power, it should be agreeable to leave unpunished any individual audacious enough to say anything otherwise than agreeable to a man in power? O yes; it is just possible. Witness *Morning Chronicle* in the days of *Perry* and Lord Chief-Justice Ellenborough.—v. 481.

THE WORD "SEDITION."

In this instance, as in every other, what the possessors of power have in view and at heart, is—under the name of *punishment*—to cause suffering to fall upon any such persons to whom it shall have happened to have offered *opposition*, in any shape, to their *will*, determined, as it is, by the conception entertained by them of their own interest.

Now, by the word *sedition*, what is it, then, that is expressed? *Opposition*, in some shape or other, to that will: *this*, and little more, if anything. At any rate, nothing the shape of which can be said to approach in any degree to a determinate shape.

Look for the meaning of it in statute law: look for it in common law: look for it as long as you will in both, you will look in vain.

As to the word *sedition*, in statute law it may unquestionably be found in places more than one; but, in each place, for the import that will be attached to it, reliance is placed on the import, whatsoever it may be, which by each reader shall happen to be attached to it. Unfortunately, various as well as numerous are the imports which, with almost equal pretensions to propriety, may present themselves as attached to it; imports correspondent to which are so many species of mischievous acts, differing widely from one another in quality and quantity of mischievousness. A sample may, perhaps, be brought to view before these pages are at an end.

Now, of the immense and undigested mass of statute law, in what portion will any exposition—any attempt to give an explanation and fixation—of the import of this important word be found? In the instance of this, as well as almost every other

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denomination of offence, nowhere. In the manufacturing of this species of law, no man ever scruples to assume, and to any extent, those things to be universally known and understood by everybody, the possibility of knowing and understanding which has not been allowed to anybody. To the manufacturers, the very idea of definition is an object of a not altogether ill-grounded horror—of real horror—and therefore, to escape from the indignation due to such neglect of duty, of affected contempt,—*absurd*, *pedantic*, wild, visionary, and impracticable,—such are the epithets kept in store to be poured down upon the head of every presumptuous innovator, whose audacity shall dare to propose the extending, to this most important of all sciences, that instrument of elucidation, which is never regarded as being misapplied, when applied to the most trivial—be they what they may—of the several other branches of art and science.

Lastly, as to *common, alias judge-made* law. Not that the definitions which occur here and there, in the books called *books of common law*, are, any of them, possessed of any binding force or authority: to each such exposition, whether repeated as having been given by a judge speaking as such, or exhibited by an unofficial and uncommissioned treatise-maker, each succeeding judge, on each occasion, bestows such regard, and no other, as it happens to him to find his convenience in bestowing: for nothing can he ever see, that, if so determined, can have any such effect as that of restraining him from the freest exercise of such his pleasure. Still, however, in such expositions, definitions, exemplifications, and illustrations, as are to be found in law-books, a man who is rich enough to possess a law-library of adequate magnitude, and, at the same time, has leisure enough to make this use of it, may, in most cases, find some guide to reflection—some help to conjecture.

Accordingly, in books of *common law*, words may here and there be found, which have been taken for the subject of declared definition. Examples are, the words, *high treason*, *riot*, *rout*, *and unlawful assembly;* not to speak of others which have no immediate bearing upon the present subject.

But, in the number of them, the word *sedition* is not to be found.—v. 260.

ANARCHY AND DESPOTISM.

Next to the evils of anarchy, are the evils of despotism. Political society once formed, despotism is the predominant disease,

to the attacks of which it remains continually exposed. Despotism, or misrule, has place in so far as the force of the whole is, for the benefit of *the one* or *the few*, employed in a manner mischievous to *the many*.—v. 222.

THE HABEAS CORPUS ACT. *

As for the *Habeas Corpus Act*, better the statute-book were rid of it. Standing or lying as it does,—up one day, down another,—it serves but to swell the list of sham-securities with which, to keep up the delusion, the pages of our law-books are defiled. When no man has need of it, then it is that it stands: comes a time when it might be of use, and then it is suspended.—iii. 435.

BRIBERY COMPARED WITH INTIMIDATION.

Compared with the system of *terrorism*, the system of *bribery* is virtue. Under the system of *bribery* both parties are pleased. The *giver* of the bribe gets what *he* most desires; the *receiver* of it what *he* most desires: both parties are gratified; both parties are contented. In both situations you see smiling faces, indexes of contented hearts. Under the system of *terrorism*, whatsoever feeling of satisfaction can have place, look for it on one side only: and even on that side scarcely can it have place, without having for its alloy the apprehension of odium, and that odium just:—frowns above; gloom below:—sympathy, satisfaction, nowhere.—iii. 484.

LORDS SPIRITUAL.

Lords, who are *not* Peers, but something better and still more respectable than Peers; namely,—I. *Bishops, Right Reverend;* II. *Archbishops, Most Reverend.* These, to distinguish them from the sort of Lords who *are* Peers, are styled Lords *Spiritual;* to wit, in consideration of the *spirit* they are full of. *Spirit* meant originally *gas:* a kind of thing, one species of which is that which streets are lighted with: in *their* instance, it means a *sacred* sort. *Sacred* means the same as *holy:* so now you understand what they are. In contradistinction to them, the Lords

* Written in 1817.

who are Peers, and have for their contradistinction attributive the word TEMPORAL, cannot but, in conformity to the established nomenclature, be acknowledged to be *profane: sacred* and *holy* are synonymous to spiritual—*profane* to *temporal: sacred* and *profane* are to each other as black and white: *holy* men are, somehow or other, if you will believe them, "*in God;*" and, being so *in God*, they contrive, somehow or other, to be *Fathers;* which is more than *your* Bishops can do *—in a *carnal* sense at least—or your Archbishops either.—iv. 438-439.

LEGISLATIVE MISTAKES.

Mistakes, if made by legislation, cannot they be corrected by legislation? O yes, that they may; and so may mistakes in generalship. In what time? With good fortune, in a twelvemonth: with ordinary fortune, in two or three years, or in another parliament. When the army has been cut to pieces for having been enacted to march the wrong way, get an act of parliament, and you may order a retreat: when the capital has been sunk in a bad trade, get an act of parliament, and you may try another.—iv. 132.

HOW TO BRING IN A BILL, WITH PRECAUTIONS AGAINST ITS PASSING.

According to established usage, you have given notice of your intention to propose a measure on the subject, and to the effect in question. The intention is of too great importance to be framed and carried into act in the compass of the same year or session: you accordingly announce your intention for next session. When the next session comes, the measure is of too great importance to be brought on the carpet at the commencement of the session; at that period it is not yet mature enough. If it be not advisable to delay it any longer, you bring it forward just as the session closes. Time is thus gained, and without any decided loss in the shape of reputation; for what you undertook, has to the letter been performed. When the measure has been once brought in, you have to take your choice, in the first place, between operations for delay and operations for rejection. Operations for delay exhibit a manifest title to preference: so long as their effect can

* Addressed to the citizens of France in 1830.

be made to last, they accomplish their object, and no sacrifice either of design or of reputation has been made. The extreme importance and extreme difficulty are themes on which you blow the trumpet, and which you need not fear the not hearing sufficiently echoed. When the treasury of delay has been exhausted, you have your choice to take between trusting to the chapter of accidents for the defeat of the measure, or endeavouring to engage some friend to oppose it, and propose the rejection of it. But you must be unfortunate indeed, if you can find no opponents, no tolerably plausible opponents, unless among friends, and friends specially commissioned for the purpose: a sort of confidence more or less dangerous must in that case be reposed.

Upon the whole, you must however be singularly unfortunate or unskilful, if by the counter-measure of diversion any considerable reduction of the abuse or imperfection be, spite of your utmost endeavours, effected, or any share of reputation that you need care about, sacrificed.—ii. 535.

POWER OF A SUPREME LEGISLATURE UNLIMITED.

The King, with the advice and consent of the Lords and Commons, might, if such were his pleasure, might, viz. by act of parliament, take into his hands the whole wealth of the country, and share it between himself and them. Nothing could be more correctly lawful: but, as few things would be more manifestly *inexpedient*, it is what never has been done, and what nobody, sane or insane, is afraid of seeing done.—v. 297.

THE QUALIFICATIONS OF AN ENLIGHTENED LAWGIVER.

Laws need not be of the wild and spontaneous growth of the country to which they are given: prejudice and the blindest custom must be humoured; but they need not be the sole arbiters and guides. He who attacks prejudice wantonly and without necessity, and he who suffers himself to be led blindfold a slave to it, equally miss the line of reason.

Legislators who, having freed themselves from the shackles of authority, have learnt to soar above the mists of prejudice, know as well how to make laws for one country as for another: all they need is to be possessed fully of the facts; to be informed of the local situation, the climate, the bodily constitution, the manners,

the legal customs, the religion, of those with whom they have to deal. These are the data they require : possessed of these data, all places are alike. If they are more at home in their own country than elsewhere, it is only because the requisite stock of facts in the former situation is already possessed by them, without their being obliged to wait the time which, in a foreign country, it would require to seek them out.—vii. 180-181.

ILLUSTRATIONS OF THE EFFECT OF ARBITRARILY TRANSFERRING THE LAWS OF ONE COUNTRY TO ANOTHER.

Wrongful Confinement and Wrongful Banishment.—The effects of these two injurious acts are liable to great diversity, from differences in point of climate, manners, or religion. A night's confinement in the prison called the Black-hole, in the hot climate of Calcutta, after producing the most excruciating torments, proved fatal to nearly all the persons who were confined in it. In a winter's night in Siberia, the same number of persons might perhaps have undergone a confinement of the same length in a similar space, without any very remarkable inconvenience.

Confinement inflicted upon a Gentoo, might, under certain circumstances, be attended with the forfeiture of his caste ; a possession to him much dearer than life : even banishment, if the effects of it were to seclude him from the necessary means of observing his religious ceremonies, might be attended with a similar effect. Either species of coercion might, at any rate, wound his conscience, inflicting thereby a simple mental injury of the severest kind. The Gentoos seem to stand at the summit of the scale of sensibility on this line. Descending, we find the Mahometan, the Jew, the Greek Christian, the Catholic Christian, all exposed to suffer from similar causes, according to their respective notions of religious duty : the Mahometan, by being hindered from performing his ablutions, or forced upon a diet inconsistent with his fasts ; the Jew, in like manner, by being forced at any time into a forbidden diet ; the Greek, by being put under a coercion of the same kind during any of his times of fasting ; the Catholic, from a similar cause, or from the being prevented from hearing mass ; even the pious Protestant might suffer in some degree, by finding himself deprived, for a length of time, of the comforts of a spiritual communion : these being so many circumstances demanding particular attention in the choice of punishments to be inflicted on such individuals.

Simple Mental Injuries.—Those sights, those discourses, which would give pain to the inhabitant of one country, would not, in every instance, be productive of a similar sensation to the inhabitant of another. This difference, too, like so many others, turns upon the point of religion. The sectary of every religion, at least the vulgar, that is, the great bulk of every sect, is exposed to the dread of invisible agents: but the names and attributes of those agents are different: the mind of a Gentoo may be filled with unspeakable terror from the apprehension of a visit from Peshush; while an ignorant Christian is afraid of witches, devils, ghosts, and vampires.

The votary of every sect may receive a cruel wound from any discourse or exhibition which tends to reflect contempt on any of the objects of his veneration. Protestants feel little in comparison but for Christ Jesus, and for that Blessed Spirit which is often figured as a dove. The Catholic, to the list of Divine Persons adds the Virgin Mary; and every martyr and every saint who is added to the calendar, makes an almost equal addition to the sphere of his sensibility. The Mahometan has his apostles besides Mahomet; and the Gentoo his deities besides Brama.

Among the higher classes of Mahometans and Gentoos, for a man to intrude himself into the presence of a married woman would, to the husband, be an unpardonable injury; a bare request to see her, an affront. Such injuries, to which the European would be insensible, might, in Asia, with perfect propriety, be referred to the denomination now before us. More than this, the idea which it would be proper to annex to these several offences will vary much in different countries, in virtue of the various circumstances to which it will be respectively proper to give the effect of justification, exemption, extenuation, or aggravation.

The differences of castes in Hindostan furnish a copious stock of extenuations and aggravations to different classes of offences.

The extraordinary extent, if one may so say, of the surface of their moral as well as religious sensibility, exposes them to a proportional variety of injuries: hence so many peculiar grounds of defence and *provocation*. We are told, that "on the Malabar side of the coast, if a Hallachore chance to touch a man of a superior tribe, he draws his sabre and cuts him down on the spot, without any check from his own conscience, or from the laws of his country." *

* Scrafton's Reflections on the Government of Indostan.—Verelst's View of the English Government in Bengal. *See* Verelst, p. 72.—East India Reports of the House of Commons, 1772.

A prejudice so strong, though altogether unjust and ferocious, would require great forbearance on the part of the legislator: it would require art to soften and to combat it. But it would be better to yield to it altogether for a time, than uselessly to compromise his authority, and expose his laws to hatred.

Semi-public Offences.—Different countries are subject to different calamities, according to their situation, climate, productions, means of defence, &c.: hence results a great variety in the laws of police.

In those countries which are nurseries of the plague, many precautions may be requisite, which would be needless against that horrible distemper in other countries. Such precautions would give rise to a correspondent train of offences. It might become an offence, for example, to pass from one town to another; to enter a port; to leave a vessel before the prescribed time; or to disembark a bale of goods, &c.

In Great Britain, it could scarcely be in the power of any authority, short of the supreme, to do anything in the way of engrossing or otherwise, towards producing or enhancing the calamity of famine. In islands of less extent and fertility, or under governments more liable to abuse, the danger might not be so ideal. In Bengal, the famine by which so many millions were swept off in the year 1769, was owing, let us hope, to no other cause than the inclemency of the seasons, or the insuperable difficulties attending a new system of government: but without legislative precautions, a similar effect might, perhaps, be produced by the abuse of delegated power in that distant member of the British empire.

In mountainous countries, great mischief is sometimes done by falls of snow, which, in the neighbourhood of the Alps, are called *avalanches*, and by which whole villages are sometimes overwhelmed. A sudden concussion given to the air, by means so inconsiderable as the discharge of a pistol, will sometimes, it is said, be sufficient to give rise to a catastrophe of this sort. I forget what traveller it is who says, that on this account the discharge of fire-arms is made penal in some parts of that mountainous region.

In maritime countries, the coasts of which consist of a loose sand, there are often found different sorts of plants, chiefly of the *rush* kind, which, by the matted contexture of their roots, communicate to the soil a degree of tenacity, by means of which it is enabled to afford a more effectual resistance to the encroachments of the water. By the laws of various countries in Europe, the

destruction of such plants is prohibited, under penalties which would be altogether useless in different situations.

In the Dutch and Flemish provinces, the extreme vigilance with which it is necessary to guard against the incursions of the sea, will naturally give occasion to various regulations, for which there would be no use in a more elevated situation.

In towns where the coldness of the climate requires that the houses should be substantial, and the dearness of ground-rent renders the style of building lofty, the danger that may attend the fall of such as happen to be ruinous, gives occasion to regulations which would be unnecessary in those sultry regions where an ordinary house is little more than a large umbrella.

In some parts of Spanish America, the fear of earthquakes prevents the inhabitants, it is said, from giving to their buildings that degree of solidity which, on other accounts, they would deem eligible. In such hazardous situations, the superintending care of the legislator might, perhaps not improperly, second the prudence of the individual.

In hot climates, the letting into a country a mass of stagnant water might, in certain situations, be productive of an injury to public health, from which the inhabitants of more temperate regions are in a great measure secure.

Sicily and other parts of Italy are exposed to a wind called the Sirocco, which, by the excessive heat and languor it occasions, is extremely troublesome. Certain parts of the East are occasionally afflicted with a wind called Samieli, the influence of which is said to be almost instantaneously fatal. If, in any of those countries, there was a wood, or a hill, or even a wall, which could in any degree answer the purpose of screening the neighbourhood from the blast, the removal of such a fence might be guarded against by penalties which, in our temperate regions, would have no such utility to justify them.

In Arabia, and other countries where water is scarce, the exposing or dissipating the water of a single spring might expose thousands to perish with thirst, and render the communication between one district and another almost impracticable.

In Russia, the destroying or putting down a few inns might be productive of effects almost equally mischievous. In England, hundreds of much better houses of the like sort are put down every year, without occasioning the least sensation.

Offences against Property.—It is evident that these are liable to infinite diversity, in as far as the events, which it is expedient

should be admitted into the list of those constitutive of title, are liable to differ. Other differences will necessarily arise, from a thousand sources, too tedious to particularize : to enlarge upon this head would be impossible, without prematurely engaging in the intricacies of the civil branch of jurisprudence.

The name of *usury* will, in different countries, according to the greater or less plenty of money, be given to contracts of very different descriptions : in England, six per cent. is deemed excessive ; in Bengal, twelve per cent. is deemed moderate ; it is the usual interest, just as it was among the ancient Romans.

The offence of *extortion* will require to be defined differently in different political situations. If a clerk in a merchant's counting-house were to present his compliments, and state to the prime minister of England, that a present of money would not be unacceptable, the statement would be laughed at. But such has not always been the case in Bengal : an equally civil and cautiously worded message, directed to Mahomed Reza Pawn, appears not to have been altogether unattended to.*

The kind of government occasions a great variety in the definition of this kind of offence. Greater precautions are requisite to protect the subjects in a conquered country, or under an absolute government, than among the citizens of a free state. On the other hand, a conquering republic is more oppressive to the conquered country than a conquering monarch : a monarch may be rapacious ; but he is interested in preventing the exactions of his officers : in a republic, on the other hand—in the Senate of Rome, for example—there existed a tacit collusion among those that possessed authority.—i. 173-176.

NATIONAL PREJUDICES TO BE CONSIDERED BY LEGISLATORS.

The clear utility of the law will be as its abstract utility, deduction made of the dissatisfaction and other inconvenience occasioned by it. Hot-headed innovators, full of their own notions, only pay attention to abstract advantage. They reckon discontent for nothing : their impatience to enjoy, is the greatest obstacle to their success. This was the great error of Joseph II. The greater part of the changes he proposed were good abstractedly ; but as he had not considered the dispositions of the people, he rendered

* East India Reports, Ho. Com., 1772.

his best designs abortive by his imprudence. How often are men the dupe of words! What is the public good, but the happiness and contentment of the public?

The value of dissatisfaction will be in the compound ratio of three things:

1. The *multitude* of the persons dissatisfied;
2. The *intensity* of the dissatisfaction in each person;
3. The *duration* of the dissatisfaction on the part of each.

These are the bases of calculation, if we would operate with success: the smaller the number of the discontented, the greater the chance of success; but this is not a reason for employing less humanity in the manner of treating them. If only one person were rendered unhappy by the change, he would yet be worthy of the notice of the legislator, who ought, at least, to free his measures from insult and contempt, to create new hopes, to collect those which revive, and to publish amnesties for the past. Really useful changes possess a fund of reason, which will tend at all times to produce a conviction of their utility.

Every species of dissatisfaction should be relieved by its particular remedy. A pecuniary loss requires pecuniary compensation: a loss of power may be compensated either by an indemnity in money or in honour. Disappointed expectation may be softened by those arrangements which open a new career to hope.

As a means of obviating dissatisfaction, indirect legislation should be preferred to direct; gentle means, to violent: example, instruction, and exhortation should precede, or follow, or, if possible, stand in the place of law.

Ought inoculation to have been established by law? No, without doubt. Even supposing it had been possible, the effect would have been dreadful: it would have carried alarm and dismay into a multitude of families.* The practice, however, has become universal in England, from the force of example and public discussion alone.

Catherine II. was very skilful in the art of ruling minds. She did not make laws obliging the Russian nobility to enter the military service, which they disliked; but by determining all their ranks, by fixing all precedencies even among civilians, according to the grades in the army, she combated their indolence

* This refers to inoculation for the Small Pox. The censure would not extend to the late legislative measure (3 and 4 Vict. c. 29.) for enforcing the less formidable precaution of vaccination. The principle of that measure is—not the enforcing the practice on a people prejudiced against it, but the protection of the body of the people from the mischief which may be occasioned by the carelessness of individuals.—*Ed.*

by their vanity, and the nobles of the most distant provinces sought to obtain the new distinctions, that they might not be superseded by those whom they had hitherto esteemed beneath them.

In choosing, among many laws, which shall be introduced first, select that which, being established, will facilitate the introduction of the others.

The slowness of its operation is, as far as it goes, an objection to a measure; but if this slowness may be a means of obviating a dissatisfaction, which expeditious measures would excite, the former may be preferable.

When the prejudices of the people are violent and obstinate, the legislator is in great danger of running into extremes. One extreme is, to take fire at the prejudice, and resolve upon its extirpation, without weighing the good and bad effects of such a measure in the balance of utility: the other is to suffer these prejudices to be made use of, as a pretext for that indolence and pusillanimity which would leave the evil without remedy.

These prejudices have generally some *salvo* for good government and good morals. It is the province of the legislator to find out this salvo, if there be one, and make use of it; and, in the mean time, if it be worth while, to try what instruction and other gentle means will do, towards getting the better of the prejudice.

It was in this manner, as has been observed by Rousseau, that Francis I. overthrew the employment of seconds in duels: "Quant à ceux, dit il, qui aurant la lâcheté d'employer des seconds, &c." He opposed honour to honour; and as the individuals fought to prove their courage, no one dared to call in those auxiliaries, whose assistance was thus marked as throwing a suspicion upon that courage itself.—i. 181-182.

ON ATTRIBUTING DEFECTS IN THE LAW TO THE BARBAROUSNESS OF THE PEOPLE.

It is a saying attributed to Solon, that the laws he had given to the Athenians were not such as were the best in themselves, but the best they were capable of receiving. In this there was doubtless somewhat of truth, especially when applied to that turbulent and jealous people; and the saying would hold good, in the greatest degree, in regard to the constitutional branch of their laws; but that it was strictly true, one may venture without much hesitation to deny.

There could not have been a more convenient maxim for saving the credit of a legislator; and those who have had a legislator to defend, have not failed to make the most of it. But there are few maxims, perhaps, that have been carried so much beyond the mark: and it has been frequently cited in cases where it has not only been erroneous in itself, but not altogether innocent in its consequences.

Whatever Athenian arrogance may pretend, it will not easily gain credit with a discerning mind, that at so early a period of society the best of all possible laws should have presented themselves to view. It will not be believed, that among a people whose character disqualified them from receiving any better laws than those which Solon gave them, there should have existed a man, who in his own mind had carried that most difficult of sciences to so high a pitch of perfection, that it will never be possible for any other man to carry it higher.

This sort of apology, what degree of truth soever there may have been in it, in the instance in which it has been made, has since been much abused; and it has been employed to gain a reputation of wisdom and expediency for many a mischievous and many a foolish law. The law, such as it is, lies before you; yet, foolish as you may think it, the lawgiver may, for aught that you know, have been the wisest of mankind. But such as the author is, such are his works. Since, then, the lawgiver is wise, the law itself may perhaps be a wise one too, how foolish soever it may appear to you: it may have had its use, though you and I don't see it. Let the law, then, stay where it is; to abolish it is dangerous: a mischief may ensue, which we are not able to foresee. Such is the circle in which many a man who, insensible to the force of truth, has nothing to guide him but the prejudice he has conceived in favour of antiquity, scruples not to run. If any one has a mind to see how far the legislator was entitled to the benefit of this plea, let him consider in what channel the prejudices of the people are likely to have run, and in what points they are likely to have imposed a coercion upon the legislator. It is natural enough they should have opposed any important violent change he might have been inclined to make in the article of religion; and yet we have seen religions overthrown by the legislator, and others set up in their stead. It is natural enough they should oppose the investing men with new powers, or making a new distribution of the old; and yet in this way, too, we have seen great changes made by legislators, with little or no opposition on the part of the people. It is natural enough they should oppose any wishes he might form, or might be suspected to entertain,

of subjecting them to new and irksome restraints or obligations; although among the most necessary restraints and obligations, we shall find some of the most irksome. But a supposition, that is not by any means a natural one, is, that by dint of menaces and clamour they should have forced him to fetter their own freedom, by a heap of idle, trifling, and ridiculous obligations and restraints. When a code, amidst all its redundancies, is defective, and regulations of the most obvious use and necessity are looked for in it in vain, it is not a mere *ipse dixit* that will warrant us to give credit for utility to institutions, in which not the least trace of utility is discernible.—i. 191-192.

PERFECTIBILITY OF THE LAWS CHIMERICAL.

Dr Priestley has expressed his expectation that man will ultimately attain a degree of happiness and knowledge which far surpasses our present conceptions. These glorious expectations remind us of the golden age of poetry: they have, however, this advantage; the happiness of which they speak is to come, and we are not discouraged by vain regrets for what is past.

We may hope, then, that in future time improvements will be made, among other things, in the practice of legislation. But we must only consider that the laws have reached the maximum of their perfection, and that men have obtained the maximum of their happiness, inasmuch as it depends upon the laws, when great crimes shall be known only by the laws which prohibit them: when the catalogue of prohibited acts shall no longer contain actions the evil of which is imaginary: when the rights and duties of the different classes of men shall be so well defined in the civil code, that there shall be no suits arising upon points of law: when the system of procedure shall be so simplified, that the disputes which from time to time may arise upon questions of fact, shall be terminated without any other expense or delay than is absolutely necessary: when the courts of justice, though always open, shall be rarely resorted to: when nations, having laid aside their arms and disbanded their armies by mutual agreement, and not from mutual weakness, shall only pay almost imperceptible taxes: when commerce shall be free, so that what may be done by many, shall not be restricted exclusively to a small number; and when oppressive taxes, prohibitions, and bounties, shall not prevent its natural development: when perfect liberty shall be allowed to those branches of trade which require liberty, and positive encouragements shall be granted to those

which require it: when, from the perfection of constitutional law, the rights and duties of public officers shall have been so well distributed, and the dispositions of the people to submit and to resist so well tempered, that the prosperity resulting from the preceding causes shall be beyond the danger of revolutions: and, in conclusion, when the law, which should be the rule of human actions, shall be concise, intelligible, without ambiguity, and in the hands of every one.

But to what will the happiness arising from all this amount? It may be described *as the absence of a certain quantity of evil.* It will arise from the absence of a part of the different evils to which human nature is subject. The increase of happiness which will hence result, is doubtless sufficiently great to excite the zeal of all virtuous minds in this career of perfection which is open to us; but there is nothing in it unknown or mysterious, and which cannot be perfectly understood.

Everything beyond this is chimerical. Perfect happiness belongs to the imaginary regions of philosophy, and must be classed with the universal elixir and the philosopher's stone. In the age of greatest perfection, fire will burn, tempests will rage, man will be subject to infirmity, to accidents, and to death. It may be possible to diminish the influence of, but not to destroy, the bad and mischievous passions. The unequal gifts of nature and of fortune will always create jealousies: there will always be opposition of interests, and, consequently, rivalries and hatred. Pleasures will be purchased by pains; enjoyments by privations. Painful labour, daily subjection, a condition nearly allied to indigence, will always be the lot of numbers. Among the higher as well as the lower classes, there will be desires which cannot be satisfied; inclinations which must be subdued: reciprocal security can only be established by the forcible renunciation by each one, of everything which might wound the legitimate rights of others. If we suppose, therefore, the most reasonable laws, constraint will be their basis: but the most salutary constraint, in its distant effect, is always an evil, is always painful in its immediate operation.

The limits of perfectibility are not so easily assigned in some other points: it is not possible to say precisely how far the human mind may go in the regions of poetry, in the different branches of literature, in the fine arts,—as painting, music, &c. It is, however, probable that the sources of novelty will be exhausted; and that, if the instruments of pleasure become more exquisite, taste will become proportionably severe.

This faithful picture, the result of facts, is more worthy of regard than the deceptive exaggerations which excite our hopes for a moment, and then precipitate us into discouragement, as if we had deceived ourselves in hoping for happiness. Let us seek only for what is attainable: it presents a career sufficiently vast for genius; sufficiently difficult for the exercise of the greatest virtues. We shall never make this world the abode of perfect happiness: when we shall have accomplished all that can be done, this paradise will yet be, according to the Asiatic idea, only a garden; but this garden will be a most delightful abode, compared with the savage forest in which men have so long wandered.—i. 194.

THE FORMS OF PARLIAMENTARY PROCEDURE.

In this bye-corner, an observing eye may trace the original seed-plot of English liberty: it is in this hitherto neglected spot that the seeds of that invaluable production have germinated and grown up to their present maturity, scarce noticed by the husbandman, and unsuspected by the destroyer.

The importance of these uninviting forms is no fine-spun speculation—no fanciful conceit. Political liberty depends everywhere upon the free action, and frequent and genuine manifestation of the public will: but the free action and genuine manifestation of that will, depend upon the mode of proceeding observed in going through the several steps that must be taken before any such result can be produced.

Without any such regulations as those here insisted on,—in short, without any regulations at all,—a general will, or pretended general will, may come now and then to be declared. But of what sort? Such an one as the will of him who gives his purse to save his life,—or signs a deed he never read, or takes an oath with an *et cetera* at the end of it,—is to the free and enlightened will of the individual. Without rules, the power of the assembly either evaporates in ineffectual struggles, or becomes a prey to the obstinate and overbearing: *Detur fortiori*, or rather *robustiori*, would be its proper motto. Unanimity may glitter on the surface: but it is such unanimity as famine and imprisonment extort from an English jury. In a system of well-digested rules, —such as the English practice, with little improvement, would supply,—will be found the only buckler of defence that reflection can have against precipitancy, moderation against violence,

modesty against arrogance, veracity against falsehood, simplicity against deception and intrigue.—ii. 332.

ADVANTAGES OF THE METHOD OF PROCEEDING IN THE BRITISH PARLIAMENT ILLUSTRATED.

Regulations.

ARTICLE I. Nothing shall be deemed to be the act of the assembly, that has not been proposed in and to the assembly by a motion made for that purpose, put to the vote, and adopted by the majority of the votes.

ART. II. Every proposition, designed to give birth to an act of the assembly, shall be exhibited in *writing* by the mover, and conceived in the very terms, neither more nor fewer, by which it is designed such act should stand expressed.

ART. III. A proposition of any kind having been once received, until that proposition has been disposed of, no other motion shall be made, unless for one or other of three purposes :—

1. To offer an *amendment* to the proposition already on the carpet ;

2. To propose a mode of putting an end to the business without decision ; or,

3. To reclaim the execution of some law of order at the instant of its infringement.

ART. IV. The process of *debating*, and that of *voting*, are distinct processes ; nor shall the latter be entered upon till after the former is gone through.

POINTS I. and II.—*Motion written, and in terminis.*

Questions, with Answers exhibiting Reasons.

Question I. Why nothing to be given as the act of the assembly that has not been put to the vote, and carried in the assembly ?

Answer. This is only saying, in other words, that no act of the assembly shall be forged.

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Question II. Why in writing ?

Answer : 1. Because it is only by writing that the tenor of any discourse can be fixed for any length of time.

2. It is only by such fixation that it can be ascertained that the draught exhibited is capable of standing as a resolution of the assembly, in the very words in which it is proposed.

Question III. Why put into writing by him who makes it, and not by any one else?

Answer: 1. Because no third person can so well tell what it is a man means, as he himself can. If the words of it, as committed to writing, are chosen by anybody else, the utmost accuracy it can aspire to in the hands of such third person is, the being as exactly representative of the meaning of the avowed author of the motion, as if he himself had chosen them. But the chances are rather against its possessing that extreme degree of accuracy; and were they ever so much in favour of it, yet so long as there is the smallest chance on the other side, such chance will form a conclusive reason against the committing the business of penning the motion to anybody else.

2. To save time. Between the penner and the author, where they are different persons, a conversation of some sort must be carried on. This conversation may, and frequently must, occasion discussions and disputes. The sense of the author may be perverted by accident or design: or, where no such perversion takes place or was intended, it may be suspected. All this while, business must be at a stand, and the assembly sitting to no purpose.

Let it be of the mover's penning; and while he is about it, no part of the assembly's time is taken up. He may have penned it out of the house, and ought so to do whenever it can be done.

3. To promote maturity of composition.—If the author of a motion is permitted to rely on a third person for the penning of it, such permission will be liable to produce hasty indigested motions, the impropriety of which the author himself, had he been obliged to put them to writing, might have discovered. Writing summons up the attention to apply itself to the discourse written, and furnishes it with a fixed subject. Whoever, in any instance, has corrected what he had once written, may find, in that single instance, a reason fully sufficient to justify the establishment of this rule.

Question IV. Why in the very words in which, when made an act of the assembly, it is proposed to stand?

Answer: 1. Because no other terms can express, with the certainty of being accurate, the object which the author of the motion proposes to the House. The composition given as the act of the assembly, is not really its act, any otherwise than as far as it is the very composition which those, whose votes form the decision of the assembly, have given their votes in favour of. If the discourse they had voted for differs, in a single word for

example, from the discourse exhibited by the author of the motion, then, as to such word, it is not of his penning; which, as has just been proved, it ought to be. The only discourse they can have meant to adopt, the only discourse they can all of them, and from the beginning, have had under view, is, to a word, the very discourse presented to them by the mover: if the resolution given in their name by any one else—the secretary, for instance, or the president—differs from that original, in a single word, it is, *pro tanto*, a forgery.

I say, in a *single word:* for every one knows, that in a single word may be comprised the most important alterations; take, for instance, the word *not*.

Point III.—*Unity of the subject of debate kept inviolate.*

Question, with Answers exhibiting reasons.

Why not suffer a second proposition to be started (except as excepted) till a former has been disposed of?

Answer: 1. That in the instance of such or such a particular proposition, the assembly may not, by *indecision* with respect to *that proposition*, be prevented from taking a course which, had its will been left free to exercise itself upon the subject, it would have taken.

This, we see, is what may be at any time the case, if a proposition, about which the assembly had begun to occupy itself, is thus permitted to be jostled, as it were, off the carpet, by another proposition different from the former, and incommensurable with it, before they are aware.

2. To prevent a degree of confusion, by which, for that time the assembly may be deprived of the faculty of forming *any will* at all.

Without some such check, nothing is more likely to happen, even without design; and that in any assembly, much more in a new-formed and numerous one. And the endeavour to produce such an effect by design, is one of the most effectual plans that individual fraud or conspiracy can pursue. In this way a thousand propositions may be thrown out, which, had the assembly been left at liberty to occupy itself about them without interruption—in short, had it been left master of its own will,—must have passed.

A proposition (suppose) has been introduced; a debate arises, and in the course of the debate something is started, from which somebody catches, or pretends to catch, the idea of something else that would be very proper to be done. This something else hap-

pening to touch upon a more sensible fibre, the next speaker takes this for his theme. Affections grow warm, and crowding about this second subject, the first is insensibly departed from and forgotten. In the same manner, a third takes place of this second; and so on, till men's minds are effectually confused, and their whole stock of time and patience gone.

This divergency is what is the more liable to take place in any assembly, especially in any new-formed assembly, inasmuch as it is what scarce ever fails to take place in private circles. In this case, it is productive of no sort of harm: for amusement, which, is here the end in view, is better provided for by rambling freely from subject to subject, than by adhering to any one. But in the case of a political assembly, it is productive of the utmost harm which such an assembly, as such, is capable of suffering.

The more eligible in its nature, and the more likely to have been embraced by the assembly, any of these propositions may be in themselves, the greater is the mischief that may result from such an irregular introduction of it. Introduced singly, each at its proper time, each one might have been carried: introduced, one upon the back of the other, each stands in the other's way—each throws another out, and a confusion is raised to which they all of them fall a sacrifice at once.

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POINT IV.—*The process of debating distinct from, and prior to, that of voting.*

Question, with Answers exhibiting reasons.

Why not allow any vote to be given till the debate is finished?

Answer: 1. That the decision given may not prove an improper one, on the score of its having been built upon *insufficient* and partial *grounds*.

To *vote* for or against a motion, is to judge—to exercise the office of a judge: to *speak* for or against it, is to exercise the function of an advocate. To vote before any one else has spoken in the debate, is to judge altogether without documents—altogether without grounds: to vote while there still remains any one to speak, who has anything to say, is to judge without documents *pro tanto*. Is there any one member whose speech is to be looked upon as proper to be attended to in this view?—so, for the same reason, must that of every other: since, abstraction made of the differences in point of talent between individuals—differences of which no general rules can take cognizance, every man's speech

presents just the same probability of affording useful lights, as that of every other.

2. That the decision given may not be exposed to the danger of proving an improper one, on the score of its being expressive of a will *different from the real* will of the majority of the assembly. Conceive a list of members, speaking in a fixed order, and each man giving his vote, as his turn comes, at the end of his speech, or without making any speech, as he thinks fit. The first upon the list, after having said what he thinks proper, gives his vote; all the others, down to the last, give their votes on the same side. The last, when it comes to his turn, gives a contrary vote, grounded on arguments which had happened to escape all the preceding voters, but which, when once brought to light, stamp conviction on their minds. What is the consequence? A decision is given, purporting to want but one voice of being an unanimous one: but, in fact, contrary to the unanimous will of all the members whose decision it purports to be.—ii. 334–343.

JUDGES IN PARLIAMENT.

Power without obligation being the condition of parliamentary service, a seat in parliament is no burden in any shape, nor creates any demand upon a man for his time. A judge may be a member of parliament for the same reason that a horse might be so. Accordingly, the chancellor's subordinate, the master of the rolls, the eight Welsh judges, and the masters in chancery, may all of them have, and commonly have, many of them, seats in the House of Commons. In English law, if you have an exception to a bad rule, it is not for any good reason, but for a reason as irrational as the rule. The twelve judges are shut out of the House of Commons:—Why? because a man cannot serve in two places at a time? No: but because they are wanted to sit cooling their heels, without opening their mouths, in the House of Lords. The same reason should shut out the masters in chancery: but Chaos has granted them a dispensation. The same reason should shut out the king's men among the mercenary lawyers: but they are wanted in the House of Commons as counsel for the minister: to be judges and parties; to sit in judgment as members, over their own conduct as king's lawyers; to prevent the amendment of the law; and to sell their constituents, whom they pay, to the crown, by whom they are paid.

Exceptions were taken when a horse was consul; there could be

none against his being a lord. It is beyond comparison better that a horse should have a voice in that house, than that a judge should. A horse-lord, present or absent, would be as capable of doing duty in the house as another lord, when attending at the opera or the gaming-table, or making the grand tour. A horse-lord, under the switch of the king's riding-master, would be as capable of giving a proxy, as another lord under the wand of the king's chamberlain. Neighing in that house would not make a horse the worse for riding; but sitting and voting there makes a judge very much the worse for judging. If a horse contracted partialities, he would not trot the worse for it: when a judge exposes himself to similar suspicions, he judges very much the worse, or is thought to do so, which comes exactly to the same thing. Custom, which sanctifies all absurdities, custom alone could reconcile men to the sight of a man holding at the same time a place in the court appealed from, and another in the court appealed to; judging under one name what he has been doing under another. The plea is, that he may be there to defend his decrees: as if a man could not be heard as a defendant, without voting as a judge. Who is there that does not remember when the nation was kept for years in a ferment, justice become odious, good judicature traduced, and bad judicature painted worse, because a great man, who had one foot on the bench, had another in the house, and was delivering, sometimes in the one place, sometimes in another, doctrines supposed to have been learnt in the king's bedchamber?* By degrees it is settled into a rule, that not only the chancellor shall have a peerage, but that the same feather shall be stuck into the caps of the two chiefs in the courts of King's Bench and Common Pleas. Ere long it will get down to the Exchequer, that Westminster Hall may not contain a single bench undefiled by politics. When you have put your judge into the house, the greatest eulogium you can bestow upon him is, that he might as well be anywhere else, for anything that he does there. You plunge him head over ears into temptation, and your hope is, that he will not be soiled by it. If this be wisdom, put your daughter to board in Drury Lane to teach her chastity. Why, then, this incongruity? Because, such is the presumption of the trader in mercenary justice, such the ascendant of talents, strengthened by wayward industry, over faculties debilitated by hereditary idleness, and such the dominion which lawyer-craft has planted in the ignorance and prejudices of public men, that the highest seat in judicature is too low for

* In allusion to Lord Mansfield.—*Ed.*

him: nor will he stoop to sit in it, unless bribed by a second and still higher station, which can have no other effect than that of unfitting him for the first.—iv. 380-381.

WHEN SHOULD JUSTICE SLEEP?

If there were a time of the year, a proper time, for justice to sleep, when would it be? When injustice does.

When is the time for the shepherd to keep holiday? When the wolf does. When is the time for the mother and the nurse to keep holiday? When the infant can live without sustenance. When is the time for the physician and the surgeon to keep holiday? When there are neither diseases nor accidents.

The ancient Romans, being pagans, and as such superstitious, had their *dies fasti*, and their *dies nefasti*: days in which justice was to be done, and days in which it was not to be done; days in which it was lawful, and days in which it was not lawful, to do justice.

The primitive Christians, a whimsical set of people, when they came into power took it into their heads, evidently out of a spirit of opposition, to "administer justice upon all days alike." In the eyes of Blackstone, neither of these courses coinciding with existing practice, both it seems were wrong: the *dies fasti* and *nefasti* made an *extreme;* and justice upon all days alike, a sort of confusion of all order, made "a contrary extreme."

"Profanation," the wickedest of all wicked things, broke out in different shapes: administering justice upon all days alike, was one of them. Among other sins of the primitive Christians, "holy church," when it came into power, took this profanation in hand to correct it. Taking into consideration five holy seasons, Advent, Christmas, Lent, Easter, and Pentecost, it beheld in them so many reasons for four intervening vacations—so many reasons for being months together without so much as pretending to administer justice. Of the necessity of the three short vacations, considering that holy mother church was at that time a Papist, Blackstone seems to have entertained a sort of half-disclosed suspicion: but, as to the long vacation, a season so comfortable to lawyers, with that he seems to have been completely satisfied. Here, to the general spiritual reasons, he adds a temporal one; a reason which, if good in those days of popery, is certainly not less good in these days of reformation: this is the demand presented for denial of justice, by the "hay-time and harvest."

Accordingly, certainly in the eyes of holy mother church, and, as it should seem, in those of Blackstone—should it have happened to a man to have his carts and his horses unjustly taken from him, and thereupon to apply to a judge to have them back again,—the application would have been an unreasonable one, contrary to the interests of agriculture. What is the matter with the man? What use can he have for his horses or his carts? Does not he know that it is harvest time?—Such would be the speech of Mother Church's and Mother Blackstone's judges.

Such is the cogency of this reason, that, in the city of London courts, whose jurisdiction ends before fields begin, long vacations are kept up no less religiously than in Westminster Hall. Not to speak of the profanation, care was taken not to call off the harvest-men from their labours in Cheapside.—vii. 241-242.

JUDICIAL ATTENDANCE.

Laity were made for clergy: suitors for lawyers:—constituents for representatives:—colonists for those who lord it over the mother country:—beasts were created for the use of man. Bear these maxims in mind, and you may account with unerring confidence for whatever you see at this moment on British ground in the church, the law, the House of Commons, or the stable.

If parturition could have been bid to wait, or a hemorrhage to stop flowing, from Trinity term to Michaelmas, surgeons as well as lawyers might have had their *long vacation*. Unfortunately, the surgeon cannot say to the wounded traveller, "Lie bleeding there till my amusement is at an end, and luxury has given place to avarice." Loss of life to the patient would be loss of fee to the surgeon, and surgeons are at the call of patients all days in the year, and all hours of the day. Had laws been planned by suitors without lawyers, law would no more have sacrificed the suitor to the lawyer, than nature has sacrificed the patient to the surgeon. We have been bidden to believe, that harvest was the cause why there is no justice in autumn: as if the time when the implements of husbandry are most wanted, were the time when the owner could best bear to be despoiled of them.

We have had in England perpetual clubs of *good fellows*: that so good a thing as good-fellowship might never cease. We have had perpetual clubs of *prayers*: that omniscience might not for a moment be kept in want of information. Is it pardonable to have imagined, in the way of vision, the equivalent of a perpetual club

of judges? Something not absolutely unlike it is said to exist in the metropolis, under the name of the Rotation-office. But these are magistrates, who, in contradistinction to those who get more by the trade, are styled *trading justices:* and a thief will not always wait, as honest men may be made to do.—iv. 378-379.

THE LAW'S DELAY.

In the one case, there is a straight road of a mile long, and without a turnpike in it: in the other case, you may go to, or at least towards, the same place by a road of a hundred miles in length—full, accordingly, of turnings and windings—full, moreover, of quicksands and pit-falls, and equally full of turnpikes. In conducting the traveller, nothing obliges the conductors to avoid the straight road, and drag him along the crooked one: nor would they ever have given themselves any such trouble, had it not been for the turnpikes, the tolls of which are so regularly settled, and the tills in such good keeping:—learned feet, could they be prevailed on, are no less capable of treading the short road than unlearned ones.—v. 24.

AN ILLUSTRATION OF RAPID JUSTICE.

An occurrence that happened not many years ago—one of a thousand that are happening every year—may help to place in broader light the two *companion pictures* of *real* justice in her native vigour, and *sham* justice in her *strait-waistcoat.*—A man dropped out of his pocket bank-notes to the amount of about £500. They were found by another man, who, being poor and illiterate, was unconscious of the value of his prize. The value opening to him by degrees, he fell into negotiations with Jews and Gentiles, and disposed of it, or a part of it, at an under-value. It was a case for *trover:* out of the multitude of instances in which the action so denominated is brought, one of the very few in which it can be brought without a lie. No one to make oath of felony, or cause of suspicion of felony. No felony, therefore no legal ground for examination by a justice of the peace. But among *unlearned* judges in general, and among those of the London police in particular, strange as it may seem to *learned* ones, there does exist a sort of principle or whim, whatever be the proper name for it, called *the love of justice.* It is by this principle,

or this whim, that they are led, on such a variety of occasions, to "do good by stealth,"—your lordship * will see how: and as they never find it "fame," that being a monopoly in the hands of their learned betters, whatever is done by them in that way, is without any expense to anybody in the article of "blushes." In the particular instance in question, at the Queen Square Police-office, *Mr Colquhoun*, hearing of the loss, took the business in hand: and, laying about him, with his so well-known activity, in this irregular way—hitting the mark by pushing in *quart*, where *learning* would have missed it by pushing in *tierce*—got back for the loser his £500, except a small part that had been spent. From link to link, he followed up the chain of information, as if it had been by an examination, carried on under the statute in a case of felony. *Warrant* none, there being no legal ground for any such coercive instrument: no witness convened but by a *summons;* to which, had the impotence of the technical system, to this, as well as so many other good purposes, been known, no regard would have been paid. Fortunately for justice, poverty, or simplicity, or terror, withheld the confederates, one and all, from applying to an attorney. If justice be a friend to man, the omission was fortunate: since it is to that she owes that technical judicature, or its terrors, did not tie up her hands.

All the learning in Westminster Hall, armed by all its power, would not have got for the man a single farthing of this £500. The finder, with the money in his pocket, would have moved off, or spent it, or shifted it from hand to hand. To the loser, *the best thing* that could have happened would have been, to be apprised *in the first instance* of the impossibility of recovering the money, and so to have sitten down quietly with the loss. *Another result* would have been, the commencing the action, and for want of that power of *investigation* which in a civil case *technical* procedure does not give, *suffering a nonsuit*, or *judgment as in case of a nonsuit*, with three or four or five score pound to pay, for costs on both sides. Another, and still worse misfortune, would have been the *getting a verdict*, and thereupon, by a sort of a vehicle called a *writ of error*, find himself set down, and then hung up, in a place called the *Exchequer chamber*, where he would have had *a year* to cool his heels, while the finder was spending or securing the remainder of the £500:—deducting, *inter alia*, for merit crowned with learning and nobility, a slight retribution, of which *Lord Ellenborough* can give your lordship a much more particular

* Lord Grenville.

account, than it is in my power to do at my humble distance.—v. 37–38.

PUBLICITY IN COURTS OF JUSTICE.

Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial. Under the auspices of publicity, the cause in the court of law, and the appeal to the court of public opinion, are going on at the same time. So many by-standers as an unrighteous judge, or rather a judge who would otherwise be unrighteous, beholds attending in his court, so many witnesses he sees of his unrighteousness, so many condemning judges, so many ready executioners, and so many industrious proclaimers of his sentence. By publicity, the court of law, to which his judgment is appealed from, is secured against any want of evidence of his guilt. It is through publicity alone that justice becomes the mother of security. By publicity, the temple of justice is converted into a school of the first order, where the most important branches of morality are enforced, by the most impressive means :—into a theatre, where the sports of the imagination give place to the more interesting exhibitions of real life.

Nor is publicity less auspicious to the veracity of the witness, than to the probity of the judge. Environed as he sees himself by a thousand eyes, contradiction, should he hazard a false tale, will seem ready to rise up in opposition to it from a thousand mouths. Many a known face, and every unknown countenance, presents to him a possible source of detection, from whence the truth he is struggling to suppress may, through some unsuspected connexion, burst forth to his confusion.

Without publicity, all other checks are fruitless : in comparison with publicity, all other checks are of small account. It is to publicity, more than to everything else put together, that the English system of procedure owes its being the least bad system as yet extant, instead of being the worst. It is for want of this essential principle, more than anything else, that the well-meant labours of Frederick and Catherine in the field of justice have fallen so far short of the mark at which they aimed. Division and subordination of judicial powers are no otherwise a guard to probity, than in as far as the chance of disagreement and altercation presents a faint chance of occasional publicity. Appeals

without publicity serve only to lengthen the dull and useless course of despotism, procrastination, precipitation, caprice, and negligence.—iv. 316-317.

UNPROMULGATED LAWS.

Every law insufficiently promulgated, is an act of tyranny as towards all those in whose conception and remembrance, by reason of such insufficiency, it fails to have implanted itself.

Nebuchadnezzar dreamed a dream: he told it to his wise men, and said to them, tell me what it was, and what it signified. Those whose interpretation did not satisfy him were put to death. A specimen this, sufficiently strong, one should have thought, of Oriental tyranny. But the men thus called upon to interpret mystery, were select men—men selected for their wisdom. The Nebuchadnezzars of modern times impose a still more difficult task—and upon whom? Upon all mankind without distinction: and, in this case as in that, not the meaning of the dream, but the very dream itself, is the mystery they are called upon to divine.—vi. 519.

EXCLUSION OF PARTIES FROM COURTS OF JUSTICE.

Whenever it happened that, in the transaction of the business, the party, the client, was himself present, as well as the professional lawyer, his assistant,—the presence of a person whose interest it was, that, of the business for which he was to pay, not more should be done than was necessary to his purpose, operated as a check to the exertions of the partnership in that part of their industry which consisted in the art of making business. Both parties felt themselves stimulated, by the strongest and most constantly acting interest, to make every exertion for the removal of so troublesome an obstacle. An iniquity so glaring, so repugnant to the most obvious ends and perpetually recurring principles of justice, so opposite to the practice of every man that ever lived, in every case in which he had the discovery of truth really at heart, could not in any country be the work of a moment. In England in particular, it cost several centuries to bring this part of the system of exclusion to the perfection in which it exists at present.

To make a direct rule of court, saying, in so many words, No

suitor shall be allowed to transact, or join in the transaction, of his own business—no suitor shall ever be admitted into the presence of the judge, or of any of the officers acting under the direction of the judge,—would have been too monstrous. The resource was, so to torment and vex the suitor by delays and fruitless attendances, as to make him regard the faculty of saving himself from this torment as a special grace and favour.

No system can ever be made so absurd or atrocious, as to appear so to the bulk of those who are born under it ; much less to those who are paid for upholding it. In Mexico, human victims were understood to be an acceptable fee, human blood a *bonne bouche*, to the supernatural and immortal judge. In England, so late as the seventeenth century, duelling was regarded as the surest mode of obtaining his judgment : and, in the presence of his natural and mortal deputies, champions were, as attorneys and barristers still are, regarded as being, on many occasions, eligible substitutes to parties and witnesses.—vii. 202.

A LITIGANT PERSONALLY APPEARING IN COURT.

Anno 1821, lived a broken botanist and ex-nurseryman named *Salisbury*. To distinguish him from a namesake of the gentleman-class, *Salisbury minor* is the name he goes by among the Fancy. At the end of a series of vicissitudes, he had sunk into one of those sinks of misfortune, in which, to help to pamper overfed judges, debtors are squeezed by jailors, out of the substance that should go to creditors. As from Smithfield an over-driven ox into a china-shop—breaking loose one day from his tormentors, Salisbury *minor* found means, somehow or other, to break into one of the great Westminster-hall shops ; in which, as often as a demand comes for the article so mis-called *justice*, bad goods are so dearly sold to all who can come up to the price, and denied, of course, to those who cannot. The china-shop scene ensued. Surprised and confounded, the shopmen exhibited that sort of derangement, which the French express by *loss of head—ils ont perdu la tête*.—v. 359.

LEGAL QUIBBLES.

The attorney (say of the plaintiff) is supposed to have written some word wrong : for this impropriety, real or pretended, if real,

intended or unintended, his client, the plaintiff, is made to lose his cause. If the case be of the number of those in which, in conjunction with the individual, the condition of the public at large is considered as suffering, as in the case of robbery and murder—of those in which the evil diffuses itself through the public at large, without infringing on any one individual more than another, as in the case of an offence affecting the revenue,—in either of these cases, it is the public that thus, for the act of the individual, is made to suffer: to the guilty individual, impunity is thus dealt out: to the not guilty individual, or public, groundless sufferings.

In the expression by which, upon any operation or instrument, *nullification* is pronounced, employment given to a sort of fiction is involved. One operation which has been performed is spoken of as if it had not been performed: the instrument which has been brought into existence is spoken of as not having had existence: at any rate, things are put, and professed to be put, into the state in which they would have been, had no such operation, no such instrument, had place. Amidst instances of mendacity so much more flagrant, scarcely would such a one as this have been worth noticing: but for exemplification and explanation of the effects, this mention of it may be not without its use. An offender, for example, has been brought to trial, and conviction has ensued: in the instrument of accusation, (say the *indictment*,) one of those *flaws*, manufactured perhaps for the purpose, has been discovered: in consequence of the observation, arrest of judgment, as the phrase is, has been pronounced. What is the consequence? Whatever *has* been done is to be considered as if it had *not* been done: information which has been elicited, is to be considered as not having been elicited: evidence, by which the fact of the delinquency has been put completely out of doubt, having been elicited, and with perfect accuracy committed to writing, is to be considered as never having had existence.

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Because a word has been misspelt by a copying clerk, a convicted murderer, for example, walks out of court, under the eyes of his deliverer and accessary after the fact—the quibble-sanctioning judge—to commit ulterior murders. Throughout the whole field of penal law, of nullification pronounced on the proceedings on grounds foreign to the merits, this, according to the general rule, and expressed in the language of Roman law by the words *non bis in idem*, is the effect. Needlessly promotive of guilt as this rule would be in any case, it would not be near so amply so as it is, were it not for the blind fixation principle, applied to days, as above. Endless is the variety of accidents—endless the variety

of contrivances—by any one of which a necessary witness may be kept from being forthcoming at the day and within the hour prescribed; while on a circuit, the judges, with their et cæteras, are circumgirating, as if by steam, on a wheel without a drag.

Humanity, that humanity which has penny wisdom for its counsellor, that humanity which can see the one object under its nose, but not the hundred of the like objects at a few rods distance, applauds the impunity given in this case: consistency would, if listened to, extend the impunity to all other cases: then would society fall to pieces: and in Blackstone's phrase, everything would be as it should be.—v. 478-479.

LEGAL JARGON.

Every sham science, of which there are so many, makes to itself a jargon, to serve for a cover to its nothingness, and, if wicked, to its wickedness: alchymy, palmistry, magic, judicial astrology, technical jurisprudence. To unlicensed depredators, their own technical language, the cant or flash language, is of use, not only as a cover, but as a bond of union. Lawyers' cant, besides serving them as a cover and as a bond of union, serves them as an instrument, an iron crow or a pick-lock key, for collecting plunder in cases in which otherwise it could not be collected: for applying the principle of nullification, in many a case in which it could not otherwise have been applied.

The best of all good old times, was when the fate of Englishmen was disposed of in French, and in a something that was called Latin. For having been once in use, language, however, is not much the worse, so it be of use no longer. The antiquated notation of time suffices of itself to throw a veil of mystery over the system of procedure. Martin and Hilary, saints forgotten by devotees, are still of use to lawyers. How many a man has been ruined, because his lawyer made a mistake, designed or undesigned, in reckoning by the almanack! First of January, second of January, and so forth,—where is the science there? Not a child of four years old that does not understand it. Octaves, quindecims, and morrows of All Souls, St Martin, St Hilary, the Purification, Easter day, the Ascension, and the Holy Trinity; Essoign day, day of Exception, Retorna Brevium day, day of Appearance—alias *Quarto die post*—alias *Dies amoris;* there you have a science. Terms—Michaelmas, Hilary, Easter, and Trinity, each of them about thirty days, no one of them more than one

day ; there you have not only a science, but a mystery : do as the devils do, believe and tremble.

Jargon pregnant with misconception, is better than jargon preservative of simple ignorance. The sense of subjection, the humiliation, the self-distrust, the despair, on the part of the non-lawyer, the client, the suitor, is more complete.

Jargon which takes a word that is in every man's mouth, and uses it in a sense in which no man ever used it, is better than a jargon made out of foreign, antiquated, technical, or other hard words. Every man knows what *common* means : most men even know what it means when opposed to *special*, and applied to a jury. Apply it now to bail, and take order about bail, you know how.—*Creditor*. My debtor is going off : he must be held to bail. —*Lawyer*. That he is already.—*Creditor*. Who are they ?—*Lawyer*. Common bail ; John Doe, and Richard Roe.—Applied to bail, *common* signifies *none*. (You will not forget to charge for these buckram bail, as if they were real ones.) Besides the profit, there is a degree of fun in this. You pick men's pockets, while you laugh at them for their patience. Kick them, or spit in their faces, you cannot ; because it is a rule with you never to see their faces : but this comes next to it.

The more pointed and solemn the assurance given, the better ; so it be but violated.

There was genius in writing word to a man, Appear before me on such a day,—and then punishing him for appearing accordingly, instead of employing an attorney. There was still more genius in saying, Appear *in person*, and then punishing him as before. He had learnt that when a lawyer says, *appear*, what he means by it is extortion or deceit : but seeing such words added as *personal*, or *in person*, he thought he might trust them for once ; that it was their intention for once to be sincere. He took it for a flag of truce : but, so savage is the hostility of this coalition, there is no trusting to its flags of truce.

Advice to lawyers :—When non-lawyers plague you (as now and then they will) about reforms, and something must be done to quiet them, they can never refuse you a hand in the business ; and it will be your part to take care that what is done shall be to little or no purpose. When you have done what can be done towards spoiling the plan, you make your mock at it : you throw ridicule on that reform, and through that on all reforms, and so you have your revenge. Thus Blackstone triumphed, when, upon the translation of the lawyer's dog-Latin scriptures into a sort of English, the darkness was but the more visible.—vii. 282-283.

LAW AS IT IS, AND AS IT IS SAID TO BE.

ASHHURST.*—*No man is so low as not to be within the law's protection.*

TRUTH.—Ninety-nine men out of a hundred are thus low. Every man is, who has not from five-and-twenty pounds to five-and-twenty times five-and-twenty pounds to sport with, in order to take his chance for justice. I say *chance:* remembering how great a chance it is, that, although his right be as clear as the sun at noon-day, he loses it by a *quibble.* Five-and-twenty pounds is less than a common action can be carried through for, at the cheapest: and five times five-and-twenty pounds goes but a little way in what they call a *court of equity.* Five-and-twenty pounds, at the same time, is more than three times what authors reckon a man's income at in this country, old and young, male and female, rich and poor, taken together:† and this is the game a man has to play again and again, as often as he is involved in a dispute, or receives an injury.

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As if law were not yet dear enough—as if there were not men enough trodden down "*so low as not to be within its protection,*" session after session, the King is made to load the proceedings with taxes, denying justice to all who have not withal to pay them: all this in the teeth of Magna Charta. "*We will deny justice,*" says King John; "*we will sell justice to no man.*" This was the wicked King John. How does the good King George? He denies it to ninety-nine men out of a hundred, and sells it to the hundredth.

The lies and nonsense the law is stuffed with, form so thick a mist, that a plain man, nay, even a man of sense and learning, who is not in the trade, can see neither through nor into it: and, though they were to give him leave to plead his own or his friend's cause, (which they won't do in nine cases out of ten,) he would not be able to open his mouth for want of having bestowed the "*twenty years' lucubrations,*"‡ which they owned were neces-

* The Pamphlet from which these passages are extracted, is a running commentary on a charge delivered on the 19th November, 1792, to the Grand Jury of Middlesex, by Sir William Ashhurst, one of the puisne judges of the King's Bench. It was not published until the year 1823, when it was accidentally discovered among the author's papers.—*Ed.*

† Davenant, quoted in Smith's "Wealth of Nations."

‡ Blackstone's Commentaries, Introduction.

sary to enable a man to see to the bottom of it, and that when there was not a twentieth part in it of what there is at present.

When an action, for example, is brought against a man, how do you think they contrive to give him notice to defend himself?* Sometimes he is told that he is in jail—sometimes that he is lurking up and down the country, in company with a vagabond of the name of Doe; though all the while he is sitting quietly by his own fire-side: and this my Lord Chief Justice sets his hand to. At other times, they write to a man who lives in Cumberland or Cornwall, and tell him that if he does not appear in Westminster Hall on a certain day, he forfeits an hundred pounds. When he comes, so far from having anything to say to him, they won't hear him; for all they want him for, is to grease their fingers.

That's *Law:* and now you shall see *Equity*. Have you a question to ask the defendant? (for no court of law will so much as let you ask him whether his hand-writing be his own) you must begin by telling *him* how the matter stands, though your very reason for asking him is your not knowing. How fares it with *Truth* all this while? Commanded or forbidden, according as a man is plaintiff or defendant. If you are a defendant, and tell lies, you are punished for it; if you are plaintiff, and will *not* tell lies, you lose your cause.† They won't so much as send a question to be tried by a Jury, till they have made you say you have laid a wager about it, though wagers, they tell you, are illegal. This is a finer sort of law they call *equity*—a distinction as unheard-of out of England, as it is useless here to every purpose but that of delaying justice; and plundering those who sue for it.

Have you an estate to sell? Sometimes you must acknowledge it to belong to somebody else; sometimes see it taken from you by the Judges, who give it to somebody else, with an order upon the crier of the court to give you such another:‡ though, had it been given to your heirs for ever, you might have sold it without all this trouble. Is this specimen to your mind, my countrymen? The law is the same all over. Enemies to truth, because truth is so to them, they do what in them lies to banish her from the lips and from the hearts of the whole people.

Not an atom of this rubbish will they ever suffer to be cleared

* In allusion to the fictions employed in the practice of the courts before the passing of the Act for Uniformity of Process.—*Ed.*

† The rule is, that every interrogatory must have a charge to support it, in which a man is obliged to assert, at random, whatever he wants to know.

‡ In allusion to the system of Fines and Recoveries, abolished by the 3 & 4 Wm. IV. c. 74.

away. How can you expect they should? It serves them as a fence to keep out interlopers.

Ashhurst.—*The Law of this country only lays such restraints on the actions of individuals as are necessary for the safety and good order of the community at large.*

Truth.—I sow corn: partridges eat it; and if I attempt to defend it against the partridges, I am fined, or sent to jail: all this, for fear a great man, who is above sowing corn, should be in want of partridges.

The trade I was born to is overstocked: hands are wanting in another. If I offer to work at that other, I may be sent to jail for it. Why? Because I have not been working at it as an apprentice for seven years. What 's the consequence? That, as there is no work for me in my original trade, I must either come upon the parish, or starve.

There is no employment for me in my own parish: there is abundance in the next. Yet if I offer to go there, I am driven away. Why? Because I *might* become unable to work one of these days, and so I must not work while I am able. I am thrown upon one parish now, for fear I should fall upon another, forty or fifty years hence. At this rate how is work ever to get done? If a man is not poor he won't work: and if he is poor the laws won't let him. How then is it that so much is done as is done? As pockets are picked—by stealth, and because the law is so wicked that it is only here and there that a man can be found wicked enough to think of executing it.*

Pray, Mr. Justice, how is the community you speak of the better for any of these *restraints?* And where is the necessity of *them?* and how is *safety* strengthened, or *good order* benefited by them?

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Ashhurst.—*Happily for us, we are not bound by any laws but such as every man has the means of knowing.*

In other words:—

Every man has the means of knowing all the laws he is bound by.

* The defects here alluded to have been materially amended by the Poor-Law Amendment Act, and other measures.—*Ed.*

Truth.—Scarce any man has the means of knowing a twentieth part of the laws he is bound by. Both sorts of law are kept most happily and carefully from the knowledge of the people: statute law by its shape and bulk; common law by its very essence. It is the Judges (as we have seen) that make the common law. Do you know how they make it? Just as a man makes laws for his dog. When your dog does anything you want to break him of, you wait till he does it, and then beat him for it. This is the way you make laws for your dog: and this is the way the Judges make law for you and me. They won't tell a man beforehand what it is he *should not do*—they won't so much as allow of his being told: they lie by till he has done something which they say he should not *have done*, and then they hang him for it. What way, then, has any man of coming at this dog-law? Only by watching their proceedings: by observing in what *cases* they have hanged a man, in what *cases* they have sent him to jail, in what *cases* they have seized his goods, and so forth. These proceedings they won't publish themselves; and if anybody else publishes them, it is what they call a contempt of court, and a man may be sent to jail for it.*

If, then, you can be in the four Westminster Hall courts, and the twelve circuit courts, and a hundred other such places at once—if you can hear everything, and forget nothing—if the whole kingdom can squeeze itself into a place contrived on purpose, that it may hold none but lawyers—if it can live in those places for ever, and has always lived in them,—the "*whole kingdom*" may have that knowledge which Mr. Justice says it has of the law; and then it will have no further difficulty, than to guess what inference the Judge or Judges will make from all this knowledge in each case.

Counsellors, who have nothing better to do, watch these cases as well as they can, and set them down in their *note-books* to make a trade of them; and so, if you want to know whether a bargain you want to make, for example, will stand good, you must go with a handful of guineas in your hand, and give half of them to an attorney for him to give t'other half to a counsellor; and, when he has told you all is right, out comes a counsellor of the other side with a *case* of his own taking which his brother knew nothing of, which shows you were in the wrong box, and so you lose your money. Some of them, to drive a penny, run the risk of being sent to jail, and publish their note-books which they call reports. But this is as it happens, and a Judge hears a case

* Burrows' Reports, Preface.

out of one of these report books, or says it is good for nothing and forbids it to be spoken of, as he pleases.

How should plain men know what is law when Judges cannot tell what it is themselves? More than a hundred years ago, Lord Chief Justice Hale had the honesty to confess he could not so much as tell what *theft* was; which however did not prevent his hanging men for theft.* There was then no *statute law* to tell us what is, or what is not, *theft;* no more is there to this day: and so it is with *murder* and *libel;* and a thousand other things; particularly the things that are of the most importance.

"Miserable," says that great Lord Coke, "miserable is the slavery of that people among whom the law is either unsettled or unknown." Which, then, do you think is the sort of law, which the whole host of lawyers, from Coke himself down to Blackstone, have been trumpeting in preference? That very sort of bastard law I have been describing to you, which they themselves call the *unwritten law*, which is no more *made* than it is *written*, which has not so much as a shape to appear in, not so much as a word which anybody can say belongs to it, which is everywhere and nowhere, which come from nobody and is addressed to nobody, and which, so long as it is what it is, can never, by any possibility, be either *known* or *settled*.

How should lawyers be otherwise than fond of this brat of their own begetting? or how should they bear to part with it? It carries in its hand a rule of wax which they twist about as they please—a hook to lead the people by the nose, and a pair of shears to fleece them with.

The French have had enough of this *dog-law;* they are turning it as fast as they can into *statute law*, that everybody may have a rule to go by: nor do they ever make a law, without doing all they can think of to let every creature among them know of it. The French have done many abominable things, but is this one of them?

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Now I will tell you my dear countrymen, what Mr Justice knows better things than to tell you; how it is, that what he would make you believe about *every man being his own lawyer* might be made true. If what there is good of *common law* were turned into statute: if what is common in both to every class of persons were put into one great book, (it need not be a very great one) and what is particular to this and that class of persons were made into so many little books, so that every man should have

* Hale's Pleas of the Crown: title Larceny.

what belongs to him apart, without being loaded with what does not belong to him. If the general law-book were read through in churches, and put into boys' hands, and made into exercises when they are at school; and if every boy when he came of age were to produce a copy of it written with his own hand before he were allowed a vote or any other privilege; and if this general law-book contained a complete list of the *particular ones*, and measures were taken for putting them, and each of them into each man's hand, as soon as the occasion happened which gave him a concern in it.

But then the matter of these law-books must be made up into sentences of moderate length, such as men use in common conversation, and such as the laws are written in, in France, with no more words than necessary: not like the present statutes in which I have seen a single sentence take up thirteen such pages as would fill a reasonable volume, and not finished after all: and which are stuffed with repetitions and words that are of no use, that the lawyers who draw them may be the better paid for them. Just like their deeds, such as you may see in any attorney's office, each filling from one to a hundred skins of parchment, long enough to reach the breadth or the length of Westminster Hall; all which stuff you must carry in your mind at once, if you would make head or tail of it, for it makes altogether but one sentence: so well do they understand the art of poisoning language in order to fleece their clients. All which deeds might be drawn, not only more intelligibly, but surer, in short sentences, and in a twentieth part of the room. A complete set of them might be adapted to all occasions to which there are any adapted of those at present in use, and would have been drawn years ago, had there been any hope of seeing them made use of.

Now God bless our good King George, preserve and purify the Parliament, keep us from French Republicans and Levellers, save what is worth saving, mend what wants mending, and deliver us out of the clutches of the harpies of the law!—v. 233-237.

MANUFACTURE OF LAW BY THE ENGLISH COURTS.

In the practice of a large proportion of all these courts, both branches of law spun out together, the substantive branch out of the adjective, in the shape of *twist*, by the judge in the course of the operations of procedure, the twist afterwards woven into piece-goods by the firm of report-maker, report-maker's bookseller, abridg-

ment-maker, and his abridgment's bookseller: and in this way it is, that, on pretence of judicature, over the whole field of law, power of legislation continues to be exercised: exercised by the combination of such essentially and flagrantly incompetent hands!

Are you a chief justice? Have you a law to make? to make on your old established mode? The following is your *recipe*. Take any word or number of words the occasion requires: choosing, as far as they go, such as are already in the language, but if more are wanted, you either take them from another language, old French or Latin, or make them out of your own head. To these words you attach what sense you please. To enable you to do, by this means, whatever you please, one thing only is now wanting. This is, that, in the accustomed form, by some person other than yourself (for you cannot yourself, as in some countries, give *commencement* to a suit,) the persons and things to be operated upon must be brought before you by the king's attorney-general, or an individual in the character of plaintiff. This done, you go to work, according to the nature of the case. Is it a civil one? To the plaintiff you give or refuse as much of defendant's property as is brought before you. Is it a criminal, or say penal one? You apply, or refuse to apply, to the defendant, the whole, or more, or less, of the punishment demanded for him at your hands. This you do in the first instance before and without any law to authorize you: for, no such authorizing law have you any need of: after which, in the way just mentioned, what you have done receives, in print, authority, extension, and permanence, from the above-mentioned hands, being by them manufactured into a sort of fictitious law doing the office of, and upon occasion overruling, an act of parliament.

From the process pursued in the principal of these manufactories, a conception, it is hoped, tolerably clear and correct, may be formed, of the manner in which this species of manufacture has been, and continues to be, carried on. These are—1. Equity courts; 2. Common-law courts; 3. Courts Christian, *alias* spiritual, *alias* ecclesiastical courts.

I. Turn first to the self-styled *equity courts*. Words comprising the raw materials, *trust*, *fraud*, *accident*, *injunction*, *account*, with the word equity at their head—here we have the whole stock of them, or thereabouts; stock in *words* small; but in *matter* as abundant as heart can desire. One of them, the master-word *equity*—so rich is it, that out of it, and by the strength of it, anything could yet, and to this day can be done, that lust of power or money can covet. What can it not do? It can take any

ward, every infant, out of the arms of any and every father, and at the father's expense, keep cramming it with the pap of imposture and corruption, till the father is reduced to beggary, and the entire mass of the child's rendered as foul as that of the crammer's mind.

Equity? what means it? A bettermost, yes, and *that* the very best, sort of justice. But, justice being, the whole together, so good a thing, what must not this very best sort be? Be it what it may, that which, on each occasion, is done by the judge of an equity court, is it not equity? Well then, by the charm attached to this fascinating word, to whatsoever he does, not only compliance and acquiescence, but admiration and laud, in the accustomed and requisite quantity, are secured.

II. Next as to the *common*-law courts; and in particular the great criminal-law court—the *King's Bench*.

Conspiracy, *blasphemy*, *libel*, *malice*, *breach of peace*, *bonos mores*, with their et cæteras—of these raw materials is composed the stock of the common-law manufactory. That which equity does for chancellor, that or thereabouts, the single word *conspiracy*, would of itself be sufficient to do for chief-justice of King's Bench. With this word in his mouth, what is it a chief-justice cannot do? who is there he cannot punish? what is there he cannot punish for?

Persons *conspire*, things *conspire*—to produce effects of all kinds, good as well as *bad*. In the very import of the word conspiracy is therefore included the conspiracy to do a bad thing: now then, so as proof has been but given of a conspiracy, that is to say, of the agreeing to do a something, or the talking about the agreeing to do it, the badness of this same something, and the quality and quantity of the badness, follow of course: they follow from the *vis termini*, the very meaning of the word, and may therefore without special proof be assumed.

So far, so good, where you have two or more to punish. But how if there be but one? In this case, a companion must be found for him. But this companion it is not necessary he should have a name: he may *be a person unknown:* for, because one of two criminals is unknown, is it right that the other should escape from justice?

So much for the King's Bench manufactory taken singly. Now for ditto and Common pleas *united*, cases and suits called *civil: verbal stock* here—*case*, *trover*, *assumpsit*, with their et cæteras.

Conspiracy, blasphemy, peace, and malice—these words were found already in the language, and whatsoever was the occasion or the purpose, required only a little twisting and wresting to make them fit it. *Bonos mores*, *trover*, and *assumpsit*, had to be

imported ; *bonos mores* and *assumpsit* from Italy ; *trover* from France : all of them had to undergo, in the machinery, more or less of improvement, ere they were fit for use. *Face* would have been as intelligible as *case*, and served as well, had fortune been pleased to present it ; *clover* as *trover : mumpsit* as *assumpsit :* but *case*, *trover* and *assumpsit*, had fortune on their side.

III. Now as to *Court Christian*. No *fissure*, violent or gradual, requisite here. Nothing requisite to be done otherwise than in the quiet way, by *splicing :* by splicing performed imperceptibly, and in the dark ; in the pitchy darkness of the very earliest ages : no need of custom, of snatching, in the manner that will be seen presently, from any other branch of the Judge and Co. firm : simple addition was the only change needed.

Mode of proceeding, or say *recipe*, this :—Take any act of any person at pleasure ; call it a *sin :* add to it a punishment ; call the punishment a *penance*. Observe, that the agent has a *soul :* say, that the soul wants to have good done to it : say that the penance will do this good to it. If, frightened at the word *sin*, the people endure to be thus dealt with, anybody is employed to accuse anybody of any one of these sins : if then he fails to make answer in proper form, you make him do this *penance :* so, of course, in case of conviction.

Now as to *fees*. Fees you receive for calling for the answer : fees for allowing it to be made : fees for making it ; and so on successively for every link in the chain. But, suppose no such answer made? Oh, then comes *excommunication :* an operation by which, whether he does or does not think that he will be made miserable in the *other* world, he will at any rate be made sufficiently so in *this*.

A circumstance particularly convenient in this case, was and is, that, besides the fees received in the course of the prosecution, the penance and the excommunication themselves have been made liquifiable into fees.

Sin, in this case, it was necessary should be the word : not *crime* or *civil injury*. But the same obnoxious act might, and may still, be made to receive all these different appellations ; and, on account of it, the agent dealt with in so many different ways ; made, to wit, after the truth of it has, by the three different authorities, in and by their several different and mutually inconsistent processes, been ascertained.

The act suppose a blow and the sufferer a clergyman. Common Pleas gives to this same sufferer money for remedy to the civil injury : King's Bench takes money from the man of vio-

lence, for the king: Court Christian takes money from the same for the good of his soul, distributing the bonus among the reverend divine's spiritually learned brethren.

True it is, that, upon proper application made,—one of these same judicatories (the King's Bench to wit,) may stop proceedings in one of the others—the Court Christian to wit. But defendant—what gets he by this? One certain suit, for the chance of ridding himself of another. And note, that in this fourth suit, the mode of establishing the fact which is the ground of the application is different from every one of the modes respectively pursued in the other three.

Such is the species of manufacture: spinning out of words, the sort of piece-goods called *law*, and *that* of the goodness that cloth would be of, if spun out of cobwebs.—v. 484-485.

ORIGIN AND USE OF CIRCUITS.

Do gentlemen suppose that the uses that have been found for circuits were the considerations that produced them? The interest of the individual, or the moment, produces laws in a dark age: ingenuity finds uses for them in a more enlightened one. Do they consider what it was for, that circuits were set a-going? It was to enable the great tyrant to swallow up the little ones. While the feudal tree was in full bloom, and castles sprung up like mushrooms, each castle enclosed a giant, who, growling treason at the king, sat banqueting on the favourite food of giants, the blood of the people. For this delicacy he was beholden to his dwarf, who with a lawyer's gown upon his back, sat squeezing the blood out, and conveying it into the monster's mouth. The arch-giant, whose dwarfs, with all their squeezing, could not supply him fast enough, bethought himself at last of despatching giants-errant to kill the little giants, that he might get their share. As these hunting giants required to be fed till they could find game, it was only now and then that such hunting parties could be fitted out. At first it was once in seven years, and this was counted a "stupendous effort of magnanimity and benevolence," by the romancers of that time. At last it came to twice in one year, where it stands at present. The little giants were killed, but the giant-killers, instead of filling their places with good men, went on their rounds, as they continue to do to this day.

When a piece of clock-work is set agoing, and heads to look

after it are wanting, it keeps on going, whether it be of use or whether it be of none. The old clock-work of revolving judges, having kept on going for so many years, is admired to this day: partly because it was of use when new, but much more because it is so old, that greatest of all merits in the eyes of lawyers.—iv. 337–338.

SIMPLICITY IN JUDICATORIES.

How happy the suitor where there is but one court, *the* court! the simplest of all clowns would not mistake his way to it. Cut courts out of one another with metaphysical shears, a science of that which ought not to have had existence is thus created out of nothing. To the necessary science of knowing whether you have a right and a remedy for it, is added the unnecessary one of knowing to what sort of a judge you are to go in order to get your remedy. In vain have you reënacted your indefeasible law of nature, and proclaimed the maxim, *Every man his own lawyer*. The hireling laughs at your maxim, and sits down in tranquil certainty of his prey. He knows that, in the very first step in the road to justice, you have built a labyrinth, to which no man has a certain clue, and to which no man but a lawyer can pretend to have any.—iv. 332.

COMMON LAW.

Having, by the accumulated labours of successive generations, been wrought up to the highest possible pitch of voluminousness, indistinctness, and unintelligibility; in this state it has been locked up and concealed from general view as effectually as possible. In England it has been locked up in two several languages, both of them completely unintelligible to the vast majority of the people. Office upon office, profession upon profession, have been established for the manufacturing, warehousing, and vending of this intellectual poison. In the capacity of suitors, the whole body of the people (able or unable to bear the charge) are compelled to pay, on one occasion or another, for everything that was done, or suffered, or pretended to be done in relation to it—for writing it, for copying it, for abridging it, for looking at it, for employing others to look at it, for employing others to understand it, or to pretend to understand it; interpreting and expounding imaginary laws, laws that no man ever made.—vi. 332.

IMBECILITY OF THE ENGLISH COMMON-LAW COURTS.

From whatever cause,—the list of the things which they could not, that is to say, would not, do, was a pretty long one.

What they could do, and did do, amounted to this: they could punish a man—hang him—cut his hands or legs off: they could take a thing, a moveable thing, bodily, from one man, and put it into the hands of another: from a house or a field they could turn a man, head and shoulders, and put him into jail if he came in again: they could take, and at one time used to take (for example, on pretence of your having been outlawed, when it was no such thing) your estate, and divide it amongst themselves: they could take the property of a dozen men (jurymen) together, and destroy or dissipate it: it was what they did as often as a new trial was granted: till about the middle of the seventeenth century, they would not grant one upon any other terms.

What they could not do, was—everything else.

Not one thing whatsoever that a man ought to do, could they make him do. A man had agreed with you to sell you an estate, and you had paid him the money: could they make him put you in possession of the estate, or put you in possession of it themselves? Not they indeed. What they could do, was to punish him, or make a show of punishing him, for not having done it: give you, or make a show of giving you, money, instead of the estate: to raise the money, take his goods, if he had not sense to put them out of the way—take them, sell them, and give you what they fetched: take his goods, or instead of his goods, if he had lands, and had not sense to dispose of them, take half of them, and but half, when double would not suffice.

In regard to the future, and in the way of restraint, they could stop another set of judges, a subordinate court, from doing what they chose should not be done; but they knew not how to deal with individuals: they could stop encroachments upon their judicature, but they could not stop waste. When a house was pulled down, they could punish a man for having pulled it down; when a grove or an avenue was cut down, they could punish him for having cut it down: but as to the preventing or stopping him, it was out of their line. Mischief must first be done, before they would stir a finger to prevent it. When the steed was stolen, then, and not till then, were they ready and willing to shut the stable door. It required equity (when equity reared its head) to stop waste.

Thus, in the way of *restraint* alone, and that very im perfectly, could they operate upon the future; in the way of *compulsion*, they knew not how to deal with it.

There was a particular circumstance, to which they were in a considerable degree, if not altogether, indebted for their impotence: and that was, their connexion with a jury.

How a set of men in many respects so arbitrary, came to find themselves hampered with this salutary clog, is among the many historical points involved in darkness: but so it was. By King's Bench, by Common Pleas, by Exchequer, scarce anything was to be done, but either *for* or *with* a jury.

But there are abundance of things that could not be done, and never have been done, nor never can be done, by a jury: and amongst these are many things so necessary, so strictly necessary, that without them the existence of society, in a state of civilisation ever so little above the state of barbarism, ever so little approaching to the present, is a matter physically impossible:—Every function requiring occasional and occasionally-repeated superintendence—every function requiring a constant eye to the future, and a ready hand to follow it—everything that was to be done in a cause which, in any one of a multitude of respects, was to a certain degree complex.

Except the anomalous and next to unexampled case where jurymen have been treated like cardinals in a conclave—whatever is done by a jury, well or ill, must be done in a single sitting: shut up again after they have been turned loose, they are no jury—their claim to confidence is gone. By possibility, a jury may sit together (because they have sitten together) twenty-four hours; but if they have sat together half the time, unless they take their verdict blindly from the judge, he choosing to give it to them, cross and pile would present a better chance for justice.

Habituated to act with a jury, these sages knew not how to act without one: no pipe, no dance; no jury, no justice. With a jury, or, in the meantime, for a jury, was everything to be done: what could not be done with a jury, was either not worth doing, or could not be done. Superstition bears her shackles everywhere: poetry has been cramped by unities: by unities, justice too has been cramped. At the play-house, what could not be squeezed into five hours was not to be represented: in Westminster Hall, what could not be squeezed into twenty-four hours was not to be done.—vii. 292–293.

COMMON LAW AND ITS QUARRELS WITH EQUITY.

The common-law system, being in such sort put together, that without assistance from some other quarter, it was impossible that society itself should be kept together, another system, under the name of *Equity*, was by necessity suffered to be imported in ecclesiastical bottoms, to apply a palliative to some of the most intolerable of its imperfections, to entangle with it, to obstruct it, to be obstructed by it, and to overrule it.—vi. 135.

Among the causes which have contributed to heap vexation upon suitors on the ground of evidence, one has been the scramble for jurisdiction (*i. e.* for fees) between the common-law courts, and the courts called courts of equity. Such was the hostility, the common-law courts refused to give credit to whatever was done under authority of their rivals. Depositions in equity were not admissable evidence at common law. When the work of iniquity is wrought by judicial hands, there must always be a pretence; but no pretence has been too thin to serve the purpose. It consists always in some word or phrase: and any one word that comes uppermost is sufficient.

The pretence on this occasion was,—a court of equity is not a court of record. A better one would have been, to have said, it is not a tennis court. The consequence would have been equally legitimate; and the defects of the common-law courts, and the effrontery of the conductors of the business, would not have been placed in so striking a point of view.

With much better reason (if reason had anything to do in the business) might the equity courts have refused the application of courts of record to the common-law courts. In every cause, the evidence, and that alone, is the essence of the cause; in it is contained whatever constitutes the individual character of the cause, and distinguishes it from all other causes of the same species: to a cause, the evidence is what the kernel is to the nut. In a court of equity, this principal part of the cause, though not made up in the best manner, is at any rate put upon record, or, in plain English, committed to writing, and preserved. In a court of law this is never done. The evidence, like the leaves of the Sibyl, is committed to the winds. What goes by the name of the record is a compound of sense and nonsense, with excess of nonsense: the sense composed of a minute quantity of useful truth, drowned and rendered scarce distinguishable by a flood of lies, which would be more mischievous if they were less notorious.

In the court of Exchequer, the same judges constitute one day

a court of equity, another day a court of law. What if the occasion for the rejection of the evidence had presented itself in this court? In the hands of an English judge, the *jus mentiendi* is the sword of Alexander. On the declared ground of iniquity, stopping every day their own proceedings, why scruple to refuse credit to their own acts?—vii. 172-173.

Among the various classes of depredators, one has been distinguished in which they hunt in couples. One of the pair runs violently against a man, and knocks him into the kennel; the other, with sympathetic eagerness, runs up to his assistance, drives off the assailant, helps up the sufferer, and picks his pockets. The ruffian thief is common law; the hypocrite thief is equity.—vii. 298.

DESCRIPTION OF A SUIT IN EQUITY.

You are the father of a family: you call on me and say,—Two of my children have a dispute about a plaything: each of them claims it as his own. Advise me, then, what shall I do to settle the matter between them? what shall I do to come at the truth? I look grave, and answer you as follows: I fear, indeed, there is something wrong on one side, or the other; I am afraid that one or other of them does not speak truth: falsehood should not be permitted to gain its ends. If I were in your place, I would endeavour to sift the matter to the bottom. I will tell you, then, how you shall manage. You must not think of sending for either of them, and examining him unawares, nor of bringing them face to face; so far from it, should either of them happen to come into the room where you are, of his own accord, you must take care and not say a syllable to him about the matter. I'll tell you what you must do: Let your youngest son tell his story upon paper, putting what questions to his brother he thinks proper: give the other boy a reasonable time to contrive his answer; first six weeks, then a month, then three weeks, then a fortnight. If his answer should be evasive, then go on in the same course with him again: perhaps the youngest may, by this time, think of some questions which he omitted to put the first time; or a fresh string of questions may be made requisite by the answers to the first: this will make another string of adjournments necessary. Meantime the eldest, perhaps, will be for telling his story, and putting his questions in return: by this means, the time for deliberation will be doubled. When affairs are come to this pass, you may either read what they have written yourself, or you may desire their uncle to inquire of the

people of the family, whether anybody heard anything of what passed, taking care not to speak to either of the boys themselves. When their uncle has told you what he has learnt, then the matter will be ripe for your decision. By this time, twice as much as the money in dispute will have been spent in pens and paper: all memory of what passed at the time when the dispute arose will be at an end: your children will have become skilled in the evils of falsehood and evasion: the time of the servants will have been taken up in carrying letters and messages backwards and forwards: your own time will have been wasted in poring over all this idle scrawl: a fixed enmity will have taken root between your children: your relations and servants will have taken their parts on one side, or on the other; and thus the truth will be fully brought to light, and the whole family will enjoy uninterrupted peace and harmony. After I had made my speech, would not you think me in a delirium? From the beginning to the end, would you think there was the least particle of common sense? This, however, is, without the least sophistication, the exact progress of what is called a suit in equity: a suit which, unless justice were denied,* might be brought for a pecuniary demand as trifling as that which has been here supposed. When I say exact, I mean, as far as it goes; but according to a very simple pattern, stripped of a thousand incidents, by fewer or more of which a suit can scarcely fail to be diversified. Not a syllable here of pleas, replications, demurrers, bills of interpleader, bills of reviver, exceptions to reports, rehearings, motions, and the like. In the patriarchal government, no type could be found of mysteries like these. I know very well that a state is larger than a family: I know very well that a judge is not to be expected to feel the same impartial tenderness for suitors, as a father for his children: but it lies upon those who think they can defend the current practice, to show why the same methods which are sure to defeat the purposes of justice in the one case, are necessary to effect them in the other.—i. 188.

INADEQUACY OF THE PREVENTIVE REMEDIES IN EQUITY.

While the boy is running to the chandler's shop to buy the salt to lay upon the sparrow's tail, (an instruction not grudged

* In fact, where the demand does not exceed ten pounds, this species of justice is denied; and that openly and without shame. Ask a man of equity for what reason? his answer is, "*De minimis non curat lex*," the subsistence of a family for half a year is not worth caring about.

to infant bird-catchers,) the bird hops or flies off at leisure. If it were in the nature of equity—English equity—to be sincere, she would find her emblem in this child. But no; the imputation would be unjust to her, if this lameness were to be ascribed to blindness.

By preventing mischief, mischief in any of the shapes in which equity is at every man's service to prevent it, there would be nothing to be got. By making a show, and that a false one, of being ready to prevent it, much is to be got, and is got. The groom who, having a common interest with the horse-stealer, waits till the steed is stolen, and then marches up to shut the stable door in ceremony,—he, and not the infant bird-catcher, is the true emblem of English equity.

While the bill is preparing, to ground the writ *ne exeat regno*, the cuckoo swindler that should have been hedged in, is winging his way to the Continent, laughing at or with the hedgers. While the Injunction Bill, by which waste should have been stayed, is scribbling, the axe of the disseisor or malicious life-holder is levelling to the ground the lofty oaks from which the venerable mansion has derived shelter and dignity from age to age. While, in all the luxury of skins and parchment, the female orphan is dressing out to make her appearance in the character of a ward of the court, the sharper whom the charms of her person or her purse have laid at her feet, is clasping her in his arms at the temple of the Caledonian hymen, laughing with her to think how the union of hearts has been facilitated by the incompleteness of the union between kingdoms.

Malefactor, whoever you are, you deserve to be confined for idiocy, or your solicitor struck off the roll for ignorance, if ever it be your ill fate to see your schemes anticipated and frustrated by English equity.—vii. 380.

HISTORY OF THE COURT OF CHANCERY.

In the beginning, when causes were comparatively few, the Chancellor,—this new sort of judge, to whom a commission had been given to judge *secundum æquum et bonum*, (it being but too manifest how widely the rules pursued by the established judges differed from this character,)—this new-made judge proceeded (as any man would naturally proceed in his place)—proceeded as the inferior judges, called justices of the peace, proceed at this day. He heard the evidence, and then he decided upon it. The

St. Albert's College Library

evidence on which he was about to decide, he heard with his own ears.

It could not be long before business of this judicial kind would crowd upon him in a much greater quantity than his other business, of which he had no inconsiderable quantity, would allow him time for. What was to be done? Of a coördinate, a rival in office, a sharer in the dignity, power, and emoluments attached to it, it was not natural that he should be desirous; nor, had he even been desirous, could he have been sure of obtaining of the king any such coadjutor; at any rate, without such solicitations as it suited not to him to make. From the first, he had of necessity (were it only for the mere mechanical, the writing, part of his business) a number of clerks under his orders; the number of these clerks soon rose to twelve. In process of time, these clerks, not being yet enough, contrived to have other clerks under them: the original sort of clerk became distinguished by the name of *Masters*. As the writings accumulated,—many of which, if not all, were for some reason or other to be preserved, and for the purpose of occasional consultation, to be put and kept in some sort of order,—this charge, a charge of no small trust, was committed to one of those clerks, who thus became distinguished from and above the rest. In those days, paper had not been invented, or at least was not in common use: parchment was the only substance to which the characters, which written discourse is composed of, was applied: the art of bookbinding was little in use: economy suggested, as the most convenient mode of adding sheet to sheet, and in such successive quantities as came to be required by successive incidents, the tacking them together in such manner that the whole length might be wound up together in the form of spiral rolls. The clerk, in whose keeping these rolls were, was thus distinguished by the name of the clerk of the rolls. When clerks became masters, the clerk of the rolls became Master of the Rolls.

Of the business committed to the Chancellor, such business as was least pleasant to him to do himself, he turned over, of course, to these his clerks. In some instances, entire causes,—decision, as well as collection of evidence. But in general it came to be felt that decision was a more pleasant operation than inquiry: decision has more of power in it—inquiry more labour: inquiry takes up more time, and creates a greater demand for patience. The business of collecting the evidence thus fell into the hands of the twelve master clerks: but more particularly of the head one amongst them, the clerk of the rolls.

The evidence thus collected, was collected by the clerks: but the Chancellor, by whom a decision was to be grounded on it,—how was the purport of it to be presented to his knowledge? The surest channel was the *tenor*: but that required it to be committed to writing. So much the better: on the account of the suitors, in respect of security against misdecision, for obvious reasons: on the account of this great officer, and these his subordinates, for other reasons not less obvious. Writing is labour:—but the labourer is worthy of his hire: and the labourer acted under the orders of one, in whose hands were vested the easiest and surest means of exacting from his employer, the suitor, whatever it should be thought prudent to demand, on the score of hire.

On interlocutory points, the power of decision, provisional decision, subject of course to appeal to the principal judge (the only judge recognised in that character,) came thus, little by little, to be exercised by all these clerks. Even on definitive points, the like power, though always subject to appeal, came by degrees to be exercised by the chief clerk, or the Master of the Rolls.

Of the whole business of procedure, the part that afforded most trouble, and by assignment had been made to afford additional profit, was that which consists in the collection of the oral part of the evidence: This portion of the business had overflowed (we have seen how, and at how early a period,) from the hands of the Chancellor, into the hands of his head clerk or official servant: the same causes continuing to operate, made it necessarily overflow into still lower and lower channels. The clerk, now become master, of the rolls, turned it over to his "*servants*." Servants, not so much as distinguished by the name of clerks, were deemed good enough for this laborious part of the business: what sort of servants (pages, footmen, grooms, or stable-boys) is not said.

These servants kicked it down to servants or deputies of their own.

From page, or foot-boy, or whatever else happened to be his original occupation, the servant rose into a clerk,—the examining-clerk,—the examiner. The examiner has long been rich enough to be above his business: he keeps a deputy, and the deputy acts by his clerks, all for the good of the public, not forgetting the master of the rolls. All these offices have their value: to all of them the nomination is in the master of the rolls: whatever may be the rational cause, the historical cause is at any rate sufficiently apparent.

The king's turnspit used to be a member of Parliament: the clerk of the deputy of a servant of a clerk of the keeper of one of the king's seals, is still a Judge.—vi. 422–423.

HOW TO EXTRACT A SIMPLE SYSTEM OF PLEADING.

Comyns, title *pleader*, shall be taken into the laboratory. It shall be thrown into the roasting furnace; the arsenic, 60 per cent., will fly off in fume:—it shall be consigned to the cupel; the lead, 30 per cent., will exude out, and repose for everlasting in the powder of dead men's bones. The golden button, 10 per cent., shall be gathered up, and made the most of.—v. 28.

LAW TAXES.

It is too much to expect of a man of finance, that he should anticipate the feelings of unknown individuals: it is a great deal if he will listen to their cries. Taxes on consumption fall on bodies of men: the most inconsiderable one, when touched, will make the whole country ring again. The oppressed and ruined objects of the taxes on justice, weep in holes and corners, as rats die: no one voice finds any other to join with it.

A tax on shops, a tax on tobacco, falls upon a man, if at all, immediately, and presses on him constantly:—every man knows whether he keeps or means to keep a shop—whether he means to sell or to use tobacco. A tax on justice falls upon a man only occasionally: it is like a thunder-stroke, which a man never looks for till he is destroyed by it. He does not know when it will fall on him, or whether it ever will: nor even whether, when it does fall, it will press upon *him* most or upon his adversary. He knows not what it will amount to: he has no *data* from which to calculate it: it comes lumped to him in the general mass of law charges: a heap of items, among which no vulgar eye can ever hope to discriminate; an object on which investigation would be thrown away, as comprehension is impossible. Calamities that are not to be averted by thought, are little thought of, and it is best not to think of them. When is the time for complaint? Before the thunder-bolt is fallen it would be too soon—when fallen, it is too late. Shopkeepers, tobacconists, glovers, are compact bodies—they can arm counsel—they come in force to the House of Commons. Suitors for justice have no common cause, and scarce a common name—they are everybody and nobody—their business being everybody's is nobody's. Who are suitors? where are they? what does a Chancellor of the Exchequer care for them?

what can they do to help him? what can they do to hurt him? So far from having a common interest, they have a repugnant interest: to crush the injured, is to befriend the injurer.

May not ignorance, with regard to the quantum and the source of the grievance, have contributed something to patience? Unable to pierce the veil of darkness that guards from vulgar eyes the avenues of justice, men know not how much of the difficulty of the approach is to be ascribed to art, and how much to nature. As the consumers of tobacco confound the tax on that commodity with the price, so those who borrow or would have wished to borrow the hand of justice, confound the artificial with the natural expense of hiring it. But if the whole of the grievance be natural, it may be all inevitable and incurable, and at any rate it may be no more the fault of lawyers or law-makers, than gout and stone are of physicians. Happy ignorance! if blindness to the cause of a malady could blunt the pain of it!

There want not apologists-general and talkers in the air, to prove to us that this, as well as everything else, is as it should be. The expense, the delay, and all the other grievances, which activity has heaped up, or negligence suffered to accumulate, are the prices which, according to Montesquieu, we must be content to pay for liberty and justice. A penny is the price men pay for a penny loaf: therefore why not twopence? and, if threepence, there would be no harm done, since the loaf would be worth so much the more.—ii. 581.

THE SHILLING FEES OF MASTERS IN CHANCERY.

Is it credible that a man in such high office, receiving so many thousands a-year, bearing so long a gown upon his shoulders, and so venerable a mass of artificial hair upon his head, indued consequently with so rich a stock of learning and virtue,—that a man so gifted should ever, in any single instance, be content to do so much mischief for a few shillings? Is it in the nature of a man so to degrade himself?

Whether in the nature of a man, is a problem I leave to philosophers. What is certain is, that it is in the nature of an English judge. A man—any man that ever breathed in such high office—do so much mischief for a few shillings?—and that in the very teeth of common sense and common honesty, and without the shadow of an excuse? *A* man? Why, they all do it, and for a single shilling: it is every day's practice: and the

Chancellor and Master of the Rolls, their superiors, know of their doing it, see them doing it, see them every day. So far from stopping it, did ever Chancellor, dead or living, ever let fall so much as the slightest token of disapprobation at the process going forward perpetually under his nose? How should he? What sense is there in expecting he should? Would you have the husbandman turn up his nose at the rottenness of the manure that is giving fertility to his fields? The present shilling of the master is the future shilling of the chancellor. As often as a master dies, the chancellor puts into the office whom he pleases. The £10,000 or £15,000 a-year of the chancellor, with its *et cæteras*, and their *et cæteras*,—are not shillings the stuff it is composed of?

* * * * * *

In the district called the Rolls there is a chapel, and in that chapel a catechism, in which, to the question—"*Who is thy neighbour?*" the answer is, *the Master who sits next to me.*—vii. 218-219.

LITIGATIONS ON THE AUTHENTICITY OF DEEDS.

In the ordinary intercourse of life, a man to whom it has happened to deny his own hand-writing is pointed at as a man of lost character; and to such a degree lost, that, to a person to whom the like loss is not a matter of indifference, it may be scarcely safe to associate with him.

On what ground is it that, for such a mode of conduct, a man is thus consigned to infamy? On this, or on none, viz., that in this way he was knowingly and wilfully guilty of falsehood:—wilful and deliberate falsehood for the purpose of injustice.

The man by whom his adversary in litigation is loaded with the delay, vexation, and expense of proving (as well as exposed to the peril of not being able, after all, in the teeth of so many opposing quirks, to prove at any expense) the genuineness of a document, of which there exists no real doubt;—literally speaking, and to outside appearance, this man does *not* commit the falsehood that would have been committed, had the question, "*Is the genuineness of this document matter of doubt to you?*" been put, and answered in the affirmative. The falsehood is not committed:—but what is committed is an injustice;—an injustice which, in point of mischievousness, is exactly upon a level with such falsehood: the injustice, in which such falsehood would have found its sole object, and its sole advantage.

The falsehood has not been committed :—but *why* has it not? Only because the judges (in whom the practice in this behalf has found its creators and preservers) have taken such good and effectual care to secure, to every dishonest man who in this way finds his account in making himself their instrument, the *benefit* of such falsehood; without that *risk* which, had the eventual necessity of it been left subsisting, would have constituted the expense of it.—vi. 123.

Witnesses to the number of half a dozen or half a score, all of them unexceptionable, are ready to be produced; each of them ready to say, "I saw the several parties attaching their respective signatures to this instrument, saying, (each of them,) *I deliver this as my act and deed.*"

Quibbleton, counsel for the defendant, addressing himself to the first of these witnesses: What is your name?

Answer. John Stiles.

Quibbleton. My lord, here is the deed :—two, (your lordship sees,) and but two, attesting witnesses; neither of them is named John Stiles.

Judge. Set aside this witness.

Half a dozen or half a score, all of undisputed character, all ready to speak to this plain fact, and not one of them permitted. Why not permitted? Answer: Because, in the first place, if permitted they would all perjure themselves: in the next place, having thus perjured themselves, they would all of them, in spite of counsel's cross-examination and judge's direction, obtain credence. Two persuasions these, neither of them (it is true) avowed, because, when absurdity and improbity enter upon the stage, they do not, either of them, present themselves stark naked. But, to give to the exclusion so much as the colour of being conducive to the ends of justice, these persuasions must both of them be entertained; or, at any rate, of the matters of fact respectively predicted by them, the *certainty*, or (to speak with a degree of correctness new as yet to lawyers' language) the *preponderant probability*, must be assumed.—vii. 190-191.

HOW TO PILLAGE A CORPORATION.

A corporation, according to Lord Coke (who was not ill acquainted with them,) has no conscience. What is better, it has commonly a long purse. Problem, how to get the money out of it? Solution: by both these qualifications, it is so much the

better disposed to the purchase of that delay, of which the Court of Exchequer, as well as the other shops, has an assortment so perfectly at its service.

Is it your misfortune to have a demand upon a corporation? You must let off upon them three writs, or three pair of writs, one after another. By the help of these three writs, at the end of about seven or eight months the suit is just begun, the corporation having made what is called an *appearance*, that is, employed an attorney to act for them, but nothing as yet done.

Sum demanded, say £2000. The writ is a command to the sheriff to levy so much money at the defendant's expense, in the event of his not employing an attorney, as he ought. In your first writ you take care that the sum thus levied, or ordered to be levied, shall be a sum plainly inferior to the interest of the money in dispute, for the time which the defendant gains by taking no notice: a customary sum is 40s., and perhaps there is no other. Defendant not appearing, you are almost angry, and to show you are in earnest, you fee counsel to move for a larger sum, taking care not to be too hard upon him—say £20. The same cause preserving inviolate on the part of the corporation the same principle of passive disobedience, you are now quite angry; and to show you are not to be trifled with any longer, you move a second time, get your third distringas, with your £50 worth of *issues*, for that is the phrase.

In Mr Fowler's account of the practice of the Court of Exchequer* (equity side,) are to be found three original and highly instructive cases, from which the above instruction was composed. Corporations squeezed:—1. Corporation of Bridgewater: 2. East India Company; and 3. A free grammar school.

Average quantity of delay sold, between half a year and a year; after which the cause was to begin. Profit to the partnership, not discoverable. Care taken by the court in each case that the amount of the eventual mulct on the second order should not exceed £20, lest obedience to the second order should take away the pretence for the third. In two out of the three cases, a brace of writs were let off at a time.

Thus, in the Exchequer, equity side. But, at common law, the art of dealing with corporations is not less completely understood. The same care to avoid precipitation; and the same tender caution not to bear too hard upon the corporation (though it has no conscience) a first and second time.†

* I. 198.

† Sellar's Crompton, i. 217; ii. 76-77.

A judge, who, with a wish to do justice, possessed power suitable,—can it be necessary to ask what in such a case he would do? He would send for an acting member of the corporation, the directing head, the writing hand, or any other (what difficulty soever they might find in settling the matter among themselves, there would be no more difficulty on the part of the judge in dealing with them, than with any one of them in his individual capacity;) and what was not done in the Exchequer, among so many learned hands, in six months, could be done in half as many minutes.—vii. 221.

COMPROMISING LITIGATIONS.

At length, when the stock of reciprocal scrawls is exhausted, when the quiver of useless arrows is on both sides emptied, the first and only inquiry, the trial before a petty jury, takes place. On this occasion, the meeting of the parties in the presence of the judge—the first stage in every system of procedure that has really the ends of justice for its ends in view—this harbinger of reconciliation, and condition *sine quâ non* to thorough explanation, though purely accidental, is at least not impossible.

On this occasion, if it so happens that both parties are in a state of *bona fides*, each conceiving himself to be in the right,—in such case, whether both or either of them are or are not present, a scene of mutual frankness and expansion of heart may not unfrequently be observed. A spectator who, not knowing or not adverting to the stage at which these amicable demonstrations present themselves, should he be witness only to the effect, would be apt to wonder how it should happen that between parties so well meaning, assisted by agents at once so faithful and so ingenuous, a difference capable of plunging them into litigation should ever have subsisted. In one consideration, and one only, can any cause be found adequate to the production of so remarkable an effect. The cause has, at this stage of it, furnished to the lawyers of all classes whatever pickings are to be had out of it. The stage in which agreement thus takes place, if it takes place at all, is that in which, if the cause did not end in this way, it would alike find its termination in another way. The stage at which all this virtue manifests itself, is that in which the parties have little or nothing to gain by it—their lawyers little or nothing to lose by it.

On this happy occasion, the advocates on both sides appear seldom backward in contributing their parts towards so salu-

tary a result. Why should they? Before things are come to this pass, the learned gentlemen have had their fees.

By termination in the ordinary way—viz., by a verdict in favour of one party or the other—nothing farther would be to be got. By a termination in some extraordinary way, in virtue of an agreement for that purpose, ulterior fees may be to be got in more ways than one; and if the overture be made, as it commonly is, before the evidence is begun to be heard, so much time and trouble is saved.

By agreement, the result may come to be modified, amongst others, in either of the following ways:—

1. By a direct compromise upon the spot.

2. By reference to arbitration: in which case, after a bad mode of inquiry, the cause is subjected to the only good one. To a good mode of inquiry—even to the very best, lawyers have no objection, when it is not substituted for, but given in addition to, their own, the bad one.—vi. 480.

WHERE IS THE INTEREST OF LAWYERS IN DELAY LIMITED?

1. The subject of depredation is the matter of property or wealth, considered as liable to be transferred from hand to hand by such means. If wealth in every shape had been destroyed, profit, judicial profit, would thus have been dried up in its source. Fees are the golden eggs: national wealth, the hen that lays them.

2. A lawyer, besides being a lawyer, is a man. He sleeps commonly in a house—he travels frequently on a road. Were any such misfortune to happen to the man, as that of seeing his house burnt, or feeling his throat cut, the sympathy of the lawyer would hardly be altogether idle. This is another motive for prescribing some sort of limitation to crimes in general, and more particularly to those more violent ones, of which, if too liberal an encouragement and indulgence were to be extended to them, the destruction of society would be a speedy consequence.

By the same principle by the action of which he is induced to nurse and encourage some sorts of misdeeds, he will be induced to aim with more or less energy and felicity at the prevention of others. The misdeeds he nurses, will be those from which he has most to gain and least to fear; the misdeeds he combats, will be those from which he has most to fear, and least to gain.

A great majority of the whole number of misdeeds have ever

been, and will ever be, offences of the predatory class; and of these, again, a great majority will have for their authors a set of miserable wretches from whom little or nothing is to be extracted in the shape of fees. They will be, in a word, crimes of indigence —theft, highway-robbery, housebreaking, and so forth. Thus far, then, clients and suitors are hardly worth multiplying in the character of defendants. Moreover, the persons exposed to suffer by these offences are persons of all classes, poor as well as rich; and, taking persons of all classes in the aggregate, a great majority will be too poor to yield a mass of fees worth stooping for. Thus far, then, they are but little worth nursing and multiplying in the character of prosecutors.

When a mass of property constitutes a stake contended for by two parties, or sets of parties, and that capable of being at an early stage impounded, or at any rate sure to be forthcoming; when an estate in any shape is at stake, and it can be so ordered that costs shall come out of the estate; this is the sort of cause worth nursing above all others.

Taken together, the aggregate of criminal suits compose an object very little worth nursing, in comparison with the aggregate of non-criminal suits. Accordingly, it is in the former class of causes that the greatest regard will be manifested for the ends of justice—that most care will be taken for securing the conviction of the wrong-doer, the acquittal of the guiltless—and that the quantity of factitious expense, vexation, and delay, will be least considerable.—vii. 207-208.

LAWYERS PROFITING BY THEIR OWN BLUNDERS.

The more indistinct, as well as voluminous, the bill with its interrogatories, the more difficult will it be for the learned gentleman by whom the answer with its responses must be drawn, to make sure of having given to each interrogatory its complete and distinct response,—and thereby to take away, if by miracle he were so inclined, all occasion for exceptions. Thus it is that, (here as elsewhere, under this as well as every other part of the system,) by and out of business, more business is made. The more unintelligible the bill is, the more certain is the demand for work for the same learned hand, in the shape of *exceptions*.

The shoemaker when he makes a shoe, the tailor when he makes a coat, does not make a hole in his work for the sake of having it to mend. But, besides that flaws are not always so

conspicuous in ideal as in physical work, no shoemaker finds a judge disposed to support him in the making of bad shoes: every advocate finds a judge determined to support him in making, in the way here described (not to mention so many other ways,) bad bills, and consequently bad answers.—vi. 445.

THE MORALITY OF WESTMINSTER HALL.

In so far as concerns justice and veracity, there are two codes of morality that in this country have currency and influence;—viz. that of the public at large, and that of Westminster Hall. In no two countries can the complexion of their respective legal codes be easily more opposite, than that of those two moral codes, which have currency, not only in the same country, but in the same societies: and, if so it be, that, in the public at large, the system of morals that has place in practice, is, upon the whole, honest and pure,—it is so, not in proportion as the morality of Westminster Hall (of which so many samples have already been, and so many more will be, exhibited) is revered and conformed to, but in proportion as it is abhorred. So far as concerns love of truth and justice, the greatest, but at the same time the most hopeless improvement would be, the raising of the mind of a thorough-paced English lawyer, on a bench or under a bench, to a level with that of an average man taken at random, whose mind had not, for professional views and purposes, been poisoned with the study of the law: as, on the other hand, in point of sound understanding and true wisdom, the raising the same sort of mind to a level with that of a man of competent education, of the nature of that to which the term *liberal* is commonly applied.

Yes: it is from novels such as Maria Edgeworth's, that virtues such as the love of justice and veracity,—it is from the benches, the bars, the offices, the desks in and about Westminster Hall, that the hatred of these virtues, and the love of the opposite vices, —is imbibed. But that which to Maria Edgeworth was not known, or by Maria Edgeworth was not dared to be revealed, is the genealogy of her *Lawyer Case:* that that very ingenious and industrious gentleman had for his elder brother the Honourable Charles Case, barrister-at-law, M.P. in the lower house; and both of them for their father the Right Honourable the Lord Chief-Justice Case, Christopher Baron Casington, in the upper: and that it was only by executing the powers given or preserved to him, and earning the rewards offered and so well secured to

him, by his noble and learned father, that the younger son became what he was.

How long, for the self-same wickedness, shall the inferiors in power and opulence—the inferiors who are but instruments—be execrated, and the superiors, who are the authors of it, adored? Attorneys, solicitors,—were they the makers of judge-made law?—were they the makers of the system of technical procedure?—were they the makers of the law of evidence?—vii. 188.

THE PROFESSION OF THE BAR.

Almost everybody knows, and a man must be a secretary of state, or at least a cabinet minister, not to know—that in this profession, above all others, success depends upon accident, at least as much as upon aptitude:—that it has for its proximate cause a certain opinion in the heads of attorneys: and that, if external circumstances, altogether independent of inward endowments, do not concur in the generation of this opinion, a man may unite the rhetoric of a Murray with the logic of a Dunning, and, at the end of a long life, die, like Sergeant Kemble the reporter, without ever having clasped to his panting breast the blessing of a brief.—v. 333.

ENGLISH AND SCOTTISH LAWYERS.

One merit which, in comparison with English, is peculiar to Scotch lawyers,—they do not plaster over the foulness of their system with eulogistic daubings. They acknowledge—at least there are some among them that acknowledge their need of amendment. Such is their humility, they are willing to draw it from the fountain that flows on the other side of the Tweed: and their southern brethren, such is their liberality, are ready with their ink to blanch the northern ebony.—vii. 224.

INJURY TO LAWYERS FROM LAW REFORM.

By the English Patricians of those days,* the same sense of injury was felt, as was felt at Rome by the learned lords and gentlemen of that time, when the book of Procedure, so religiously

* In allusion to the abolition of Norman-French, and the adoption of English, in Pleadings, in the year 1730.

kept under lock and key, was stolen and published by the arch-thief Flavius,* in such sort as forced them to compose another, placing it under better guard : in the one case, the rule of action was locked up bodily in a box; in the other, it was locked up spiritually in a dead language :—the same sense of injury, that is felt by the same learned persons, and as constantly, howsoever covertly, testified, by some of them, as often as, by a wicked and juryless Court of Conscience act, the possibility of obtaining justice in certain cases, has been extended to this or that other minute portion of the people :—the same sense of injury, in a word, as was felt by the shark, who carried off one of Sir Brook Watson's legs, at the thoughts of being obliged to leave the other in its place. A shark is still a shark, in Britain as at Rome, after the Christian æra as before. The ocean breeds them with triple rows of teeth ; the technical system with teeth not less sharp, and bushy manes like sea-lions. My lord, when a shark is seen wagging his tail in the wake of a ship, it is a sign (so the sailors say) that there is prey in preparation for him in the belly of it.—v. 15.

BROWBEATING WITNESSES.

Clothed in authority derived from the authority, and in symbolic robes analogous to the robes, of the judge,—the hireling advocate, observing in an honest witness a deponent whose testimony promises to be adverse, assumes terrific tones and deportment, and, pretending to find dishonesty on the part of the witness, strives to give his testimony the appearance of it : suppressing thus one part of what he would have had to say, and rendering what he does say,—in part, through indistinctness, unconceived, or misconceived—in part, through apparent confusion and hesitation, unbelieved.

I say the *bonâ fide* witness : for, in the case of a witness who by an adverse interrogator is really looked upon as dishonest, this is not the proper course, nor is it taken with him. For bringing to light the falsehood of a witness really believed to be mendacious, the more suitable, or rather the only suitable, course, is to forbear to express the suspicion he has inspired. Supposing his tale clear of suspicion, he runs on in his course with fluency, till he is entangled in some irretrievable contradiction, at variance

* Liv. Dec. 1. lib. 9.—Plin. Nat. Hist. lib. 3.

either with other parts of his own story, or with facts notorious in themselves, or established by proofs from other sources.—vi. 426.

HOW TO PRODUCE SUBSERVIENCY IN JURIES.

There are two ways, in either of which an effect thus desirable may be brought about:

One is, by causing them to have a will, and that will exactly the same with that of the judge.

The other is, by causing them not to have a will, viz. of their own forming: of which state of mind the necessary consequence will be their *adopting*, without more ado, whatsoever *will* may come to be presented to them for that purpose by the judge.

Of these two modes, this latter mode is by far the most advantageous one. To the success of the former, the creative or special, it is necessary that fresh labour should be bestowed upon the subject on the occasion of every cause: by the other, the preventive or general mode, the business is done once for all; and, without any fresh expense in the article of labour, a perpetually renewed harvest of success is reaped on the occasion of each individual cause: in the one case, the business is carried on in the retail, in the other, in the wholesale line.—v. 74.

UNANIMITY IN JURIES.

If the *mode of forming verdicts* had been the work of calm *reflection*, working by the light of experience, in a comparatively mature and *enlightened age*, some number certain of affording a *majority* on one side, viz.—an *odd* number, would, in this as on other occasions, have been provided; and to the decision of that preponderating number would of course have been given the effect of the conjunct decision of the whole: witness the course taken for securing a decision under the Grenville Act.*

But the age in which the mode of forming verdicts was settled, being an age of *remote antiquity*, of such high antiquity, that nothing more is known of it, except that it was an age of *gross and*

* In Scotland, the number of jurors, in criminal cases, is fifteen, a majority deciding for acquittal or conviction. The advantage of this system is distinctly perceptible in practice, though, like the principle of unanimity in England, it owes its origin purely to accidental adoption, and precedent.—*Ed.*

cruel barbarism, the course taken for the adjustment of that operation was different, and, compared with anything that was ever exhibited in any other nation, no less extraordinary than it was barbarous. The whole body of these assessors, *twelve* in number, being *confined* together in a certain situation, and in that situation subjected to a mode of treatment, under which, unless in time relieved from it, they would, at the end of a more or less protracted course of *torture*, be sure to perish: subjected to this torture, but in the case of this as of other torture, with power to *relieve* themselves from it: in the present instance by declaring, each of them, the fact of his entertaining a certain *persuasion* (the persuasion expressed by their common *verdict*) whether *really* entertained by him or *not:* in this way it was that a joint decision, called a *verdict*, expressed by a predetermined word or form of words, was on each, and every occasion, extorted from the whole twelve. Such, for the declared purpose of securing *truth*, *veracity*, *verè dicta*, for making sure that, on the sort of occasion in question, whatever declarations of opinion came to be made should be true —such was the expedient invented in the thirteenth or fourteenth century—such the course which *still* in the *nineteenth* continues to be pursued.

Here then, as often as in the number of *twelve* jurors, any difference of opinion has had place, so often has an act of wilful falsehood, of mendacity, had place: *viz.*, in the instance of some number, from one to eleven, included in the twelve, if not (as in the case of sinister influence may at any time happen) in the instance of all twelve. For that it is in the nature or power of torture—one and the same torture—as being applied at the same time and place to twelve persons, A, B, C, D, and so forth, to produce a real change of opinion in any one of them—or if it were, to render it more likely, that the opinion of A, should change into that of B, than that of B, into that of A, and so forth—is a proposition which, upon reflection, will not, it is supposed, easily find any person either to sign or so much as seriously to say it: excepting always the case of his being placed under the action of any of those machines for the production of *peace*, *concord*, *unanimity*, or *uniformity*, under the pressure of which anything whatsoever—any one thing as well as any other, is either said or signed. —v. 85.

POPULAR PREJUDICES IN FAVOUR OF THE LAW.

All the world over, what has been done by the law towards the preservation of society, has been done, not so much by what the law is in itself, as by the opinion that has been entertained of it. But as the conception, such as it is, that non-lawyers have had it in their power to obtain, and have been accustomed to entertain of it, has been derived from the only source from which it could have been derived, viz. the account given of it by lawyers; and as, according to all such accounts, the law has at all times, and through all its changes, been the perfection of reason; such, therefore, it has in general been taken to be, by the submissive and incurious multitude. By their own experience, its imperfections must all the while have continually been exhibited to their view; but experience is not sufficient always to open the eyes that have been closed by prejudice. What their experience could exhibit to them, was the *effect:* what their experience could not exhibit to them, was the *cause.* The effect, the sufferings themselves, that resulted to individuals from the imperfections of the law, were but too indubitable: but the cause to which they were imputed, was the invincible and irremediable nature of things, not the factitious and therefore remediable imperfections of the law. The law itself is perfect: this they heard from all quarters from whence they heard anything about the matter: this they heard at all times, and on all occasions, from the only men who so much as pretended to know anything about the matter.

The law is an Utopia—a country that receives no visits, but from those who find their account in making the most favourable report of it.—vi. 206.

LAWYERS AND LAW REFORM.

Adding to the mass in the *Augean stable,* every *ox* had wisdom enough for—every ox that ever was put into it: to employ a river in the cleansing of it, required, not the *muscle,* but the *genius* of a Hercules.—v. 366.

THE SLOW PROGRESS OF LAW REFORM.

About forty years ago, in a statute relative to East India affairs, (26 Geo. III. c. 57, sect. 38,) provision was made, that,—in the

case of written evidence of a certain description, written and attested in the East Indies,—for the authentication of any such article of evidence in Great Britain, proof of the handwriting of the persons whose signature appeared on the face of the instrument, should suffice: and this too for definitive authentication, and without a thought of any need of eventual confirmation by ulterior and better evidence: and so, *vice versâ*, in the case where an instrument executed in Great Britain requires to be authenticated in the East Indies.

To this same purpose, a discovery that perhaps will one of these days be made, is, that, besides the East Indies, the surface of the earth includes other countries, more or less distant from Great Britain; and, in the course of a century or so, at the present rate of the progress of legislation, the benefit of this provision may be expected to be extended to several of those other countries. But for each such country a separate act will be required; and, to warrant the motion for leave to bring in the bill, proof will be required (or at least an assurance given by a certain number of persons) that by the want of such accommodation divers persons have lost their property and been ruined; and, as often as any such bill is brought in, it will be opposed on the ground of innovation; and the proposer will be held up to view in the character of a Jacobinical anarchist, a Utopian speculatist, or both in one.—vii. 187.

APATHY OF THE PEOPLE TO LEGAL ABUSES.

What the effect of the law may be upon the fate of some individual, who at the moment happens to be an object of popular favour or disfavour, is the only sort of law-question in which the great body of the people are apt to take any very strong or steady interest. So the point of the day be gained,—at what expense it is gained (I mean at the expense of what mischief done to the whole body of the laws) is no concern of theirs.—vii. 209.

That system of cool atrocity, the maintenance of which might of itself, on the part of all those by whom the real effects of it are understood, suffice for a perpetual refutation of all pretension to any such feeling as a sincere regard for justice;—that abomination to which the duped and misguided people are so well reconciled—reconciled by the same causes by which they have been reconciled to sinecures, to deodands, to sweeping forfeitures, to corruption of blood, to imprisonment for debt, to punishment for

opinion—to capital punishment—were so once to trial by red-hot ploughshares, and trial by duelling,—and, no less than the people of Mexico and Otaheite, would have been to human sacrifices, had the blood of human victims been worth as much as their money to the tribes of priests and lawyers.—vi. 91-92.

JOBBING POLITICIANS.

In England, reasons, or at least pretexts, have been found for the arbitrary disposal of rewards, which would not exist under an absolute monarchy. The constitution of parliament gives occasion to the performance of services of such a nature as cannot be acknowledged, but which in the eyes of many politicians are not the less necessary. A certain quantity of talent is requisite, it is said, to save the political vessel from being upset by any momentary turbulence or whim of the people. We must possess a set of Mediators interested in maintaining harmony between the heterogeneous particles of our mixed constitution; a species of Drill Serjeants is required for the maintenance of discipline among the undulating and tumultuous multitude. There must be a set of noisy Orators provided for those who are more easily captivated by strength of lungs than by strength of argument; Declaimers for those who are controlled by sentimentalism; and imaginative, facetious, or satirical Orators, for those whose object it is to be amused; Reasoners for the small number, who yield only to reason; artful and enterprising men to scour the country to obtain and calculate the number of votes. There must also be a class of men in good repute at court, who may maintain a good understanding between the head and the members. And all this, they say, must be paid for.—ii. 202.

OFFICIAL SELF-COMPLACENCY.

This fallacy [called the self-trumpeter's] presents itself in two shapes:—1. An avowal made with a sort of mock modesty and caution by a person in exalted station, that he is incapable of forming a judgment on the question in debate, such incapacity being sometimes real, sometimes pretended; 2. Open assertion, by a person so situated, of the purity of his motives and integrity of his life, and the entire reliance which may consequently be reposed on all he says or does.

I. The first is commonly played off as follows:—An evil or defect in our institutions is pointed out clearly, and a remedy proposed, to which no objection can be made; up starts a man high in office, and, instead of stating any specific objection, says, "I am not prepared" to do so and so, "I am not prepared to say," &c. The meaning evidently intended to be conveyed is, "If I, who am so dignified, and supposed to be so capable of forming a judgment, avow myself incompetent to do so, what presumption, what folly, must there be in the conclusion formed by any one else!" In truth, this is nothing else but an indirect way of browbeating—arrogance under a thin veil of modesty.

If you are not prepared to pass a judgment, you are not prepared to condemn, and ought not, therefore, to oppose: the utmost you are warranted in doing, if sincere, is to ask for a little time for consideration.

Supposing the unpreparedness real, the reasonable and practical inference is—say nothing, take no part in the business.

A proposition for the reforming of this or that abuse in the administration of justice, is the common occasion for the employment of this fallacy.

In virtue of his office, every judge, every law-officer, is supposed and pronounced to be profoundly versed in the science of the law.

Yes; of the science of the law as it is, probably as much as any other man: but law as it ought to be, is a very different thing; and the proposal in question has for its avowed, and commonly for its real object, the bringing law as it is, somewhat nearer to law as it ought to be. But this is one of those things for which the great dignitary is sure to be at all times unprepared,—unprepared to join in any such design, everything of this sort having been at all times contrary to his interest,—unprepared so much as to form any judgment concerning the conduciveness of the proposed measure to such its declared object: in any such point of view it has never been his interest to consider it.

A mind that, from its first entrance upon this subject, has been applying its whole force to the inquiry as to what are the most effectual means of making its profit of the imperfections of the system,—a mind to which, of consequence, the profit from these sources of affliction has been all along an object of complacency, and the affliction itself, at best, but an object of indifference,—a mind which has, throughout the whole course of its career, been receiving a correspondent bias, and has in consequence contracted a correspondent distortion,—cannot with reason be expected to exert itself with much alacrity or facility in a track so opposite and so new.

For the quiet of his conscience, if, at the outset of his career, it were his fortune to have one, he will naturally have been feeding himself with the notion, that if there be anything that is amiss in practice it cannot be otherwise; which being granted, and, accordingly, that suffering to a certain amount cannot but take place, whatsoever profit can be extracted from it is fair game, and as such belongs of right to the first occupant among persons duly qualified.

The wonder would not be great if an officer of the military profession should exhibit, for a time at least, some awkwardness if forced to act in the character of a surgeon's mate: to inflict wounds requires one sort of skill—to dress and heal them requires another. Telephus is the only man upon record who possessed an instrument by which wounds were with equal despatch and efficiency made and healed. The race of Telephus is extinct; and as to his spears, if ever any of them found their way into Pompeii or Herculaneum, they remain still among the ruins.

Unfortunately, in this case, were the ability to form a judgment ever so complete, the likelihood of coöperation would not be increased. None are so completely deaf as those who will not hear—none are so completely unintelligent as those who will not understand.

Call upon a chief-justice to concur in a measure for giving possibility to the recovery of a debt,—the recovery of which is in his own court rendered impossible by costs which partly go into his own pocket,—as well might you call upon the Pope to abjure the errors of the Church of Rome. If not hard pressed, he will maintain a prudent and easy silence; if hard pressed, he will let fly a volley of fallacies—he will play off the argument drawn from the imputation of bad motives, and tell you of the profit expected by the party by whom the bill was framed, and petition procured, to form a ground for it. If that be not sufficient, he will transform himself in the first place into a witness giving evidence upon a committee; in the next place, after multiplying himself into the number of members necessary to hear and report upon that evidence, he will make a report accordingly.—ii. 411-412.

THE OFFICIAL CHARACTER.

Except in the case of an underling whose character is too offensively rotten not to make it matter of necessity to suffer him

to be thrown overboard, for all official men in general—high and low—there is but one character: a general character for excellence, tinged here and there with a little difference of colour, corresponding to the nature of the department. The idea looks as if it were taken from the old chronicles: where, with decent intervals, one portrait serves for half-a-dozen worthies: one town for the same number of towns, and so as to battles and executions. Time and labour are thus saved. This universal character puts one in mind of an ingenious document I have seen, sold under the title of the Universal Almanac. A copy of it has been supposed to be bound up with every cabinet Minister's copy of the red book. Like a formula for convictions, it might be inserted into each particular, or into one general, act of parliament. Subscription to it, and oath of belief in it, in relation to all official persons whose salaries had risen or should hereafter rise to a certain amount, might be added to the Test and Corporation acts: and, without need of troubling the legislature, Lord Chief-Justice Abbott, or Lord Chief-Justice Anybody, would hold himself in readiness to fine and imprison every man who should dare to insinuate that any such person that lives, or that ever has lived, or that ever shall live, is, has been, or ever can be, deficient in any one point belonging to it.—v. 330.

MINISTERIAL PANEGYRICS.

The object of vituperative personalities is to effect the rejection of a measure, on account of the alleged bad character of those who promote it; and the argument advanced is—"The persons who propose or promote the measure, are bad; therefore the measure is bad, or ought to be rejected." The object of laudatory personalities is to effect the rejection of a measure on account of the alleged good character of those who oppose it; and the argument advanced is—"The measure is rendered unnecessary by the virtues of those who are in power; their opposition is a sufficient authority for the rejection of the measure."

The argument indeed is generally confined to persons of this description, and is little else than an extension of the self-trumpeter's fallacy. In both of them, authority derived from the virtues or talents of the persons lauded, is brought forward as superseding the necessity of all investigation.

"The measure proposed implies a distrust of the members of his Majesty's government; but so great is their integrity, so com-

plete their disinterestedness, so uniformly do they prefer the public advantage to their own, that such a measure is altogether unnecessary :—their disapproval is sufficient to warrant an opposition : precautions can only be requisite where danger is apprehended ; here, the high character of the individuals in question is a sufficient guarantee against any ground of alarm."

The panegyric goes on increasing in proportion to the dignity of the functionary thus panegyrized.

Subordinates in office are the very models of assiduity, attention, and fidelity to their trust ; ministers, the perfection of probity and intelligence : and as for the highest magistrate in the state, no adulation is equal to describe the extent of his various merits.

There can be no difficulty in exposing the fallacy of the argument attempted to be deduced from these panegyrics :—

1. They have the common character of being irrelevant to the question under discussion. The measure must have something extraordinary in it, if a right judgment cannot be founded on its merits, without first estimating the character of the members of the government.

2. If the goodness of the measure be sufficiently established by direct arguments, the reception given to it by those who oppose it will form a better criterion for judging of their character, than their character (as inferred from the places which they occupy) for judging of the goodness or badness of the measure.

3. If this argument be good in any one case, it is equally good in every other ; and the effect of it, if admitted, would be to give to the persons occupying for the time being the situation in question, an absolute and universal negative upon every measure not agreeable to their inclinations.

4. In every public trust, the legislator should, for the purpose of prevention, suppose the trustee disposed to break the trust in every imaginable way in which it would be possible for him to reap, from the breach of it, any personal advantage. This is the principle on which public institutions ought to be formed ; and when it is applied to all men indiscriminately, it is injurious to none. The practical inference is, to oppose to such possible (and what will always be probable) breaches of trust every bar that can be opposed, consistently with the power requisite for the efficient and due discharge of the trust. Indeed, these arguments, drawn from the supposed virtues of men in power, are opposed to the first principles on which all laws proceed.

5. Such allegations of individual virtue are never supported by

specific proof—are scarce ever susceptible of specific disproof; and specific disproof, if offered, could not be admitted, viz. in either House of Parliament. If attempted elsewhere, the punishment would fall, not on the unworthy trustee, but on him by whom the unworthiness had been proved.—ii. 413.

HIGH SALARIES.

Salary, according to the usual meaning of the word,—that is, pay given by the year, and not by the day of attendance,—so far from strengthening the connexion between interest and duty, weakens it; and the larger, the more it weakens it. That which a salary really gives a man motives for doing, is the taking upon him the office: that which it does not give him any sort of motive for is, the diligent performance of its duties.

It gives him motives, if one may say so, for the non-performance of them; and those the stronger, the more there is of it. It gives him pleasurable occupations, to which those laborious ones are sacrificed: it sets him above his business: it puts him in the way of dissipation, and furnishes him with the means. Make it large enough, the first thing he does is to look out for a deputy; and then it is what the principal gives the deputy, not what you give the principal, that causes the business in any way to be done.

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This is not all. Salary, in proportion to its magnitude, not only tends to make a man who happens to be fit for his business, less and less fit, but it tends to give you, in the first instance, an unfit man, rather than a fit one. The higher it is, the nearer it brings the office within the appetite and the grasp of the hunters after sinecures,—those spoilt children of fortune, the pages of the minister, and of every minister, who, for having been born rich, claim to be made richer,—whose merit is in their wealth, while their title is in their necessities, and whose pride is as much above business, as their abilities are below it.—iv. 129.

Neither Charteris nor the Duke of Wharton, it is true, could have had any rational objection to a bishopric, though it were as barren as an apostleship: but neither the Colonel nor the Duke would have cared much for the lawn sleeves, if the drudgery of examinations and visitations had stuck to them, instead of being shaken off upon the chaplain and the archdeacon. From seeing

a man take a bishopric like that of Durham, for instance, you cannot, I allow, form any kind of judgment whether he is fond of preaching or no, or whether he ever made a sermon in his life. All you can tell is, that he is fond of sitting with lords, and eating £14,000 a-year. But could you be under the like uncertainty with regard to such a man as Zinzendorf, for example, who, being a rich man, and a count, chose, for the sake of apostleship, to become a poor man, and predecessor, without a title, to the now bishops of the Moravians? From seeing a man take the seals, with an income not inferior to that of the episcopal palatinate, you cannot, to be sure, pronounce with any certainty whether he does, or does not like the business of a judge: you cannot so much as tell whether he cares for the trouble of tossing the ecclesiastical crumbs, as they drop upon his table, to the Lazaruses that lie begging for them. He may keep causes waiting for a decree, for years, by twenties and thirties at a time, and spiritual flocks without pastors, in the same number, for any security that his acceptance of an office so endowed can give you of his using better diligence. The utmost you can say is, that if he hates business, his aversion to it is not so violent as his affection for the power and dignity of it, not forgetting the £14,000 a-year. But if you saw him administering justice, as Necker has been managing finance, year after year, and feeding the exchequer instead of feeding on it, would you then conceive it possible that business should be disagreeable to him? Yet, in these cases, the power and dignity which are to weigh against aversion are of the brightest and heaviest metal. What would you say if you saw equal pains taken, and with as little profit, by a country justice?

No man, however dissipated or empty-headed, need, as matters stand at present, have the smallest objection to a seat in either house: but a dissipated or empty-headed man would have very serious objections to it, if idleness and neglect of duty were not part of the privilege of Parliament. Upon such terms, it is true, he need not be paid for what is called *serving:* he may even be made to pay, and does pay, up to twenty or thirty thousand pounds, for only a chance of it, though not altogether to the right fund. But my judges are not judges for show, like wooden soldiers, at the court of a German prince who cannot afford to keep live ones. They are not bishops *in partibus infidelium* or *fidelium:* they are not chancellors of Lancaster or Barataria: they are not judges in eyre, whose jurisdiction lies *in nubibus;* and who, were they of wood, instead of flesh and blood without bowels, would spare £5000 a-year to a plundered and insulted people.—iv. 373-374.

OFFICIAL SALARIES AS THE SUBJECT OF COMPETITION.

Between "*real service and its reward*," * the "exact common measure" is the least quantity of the matter of reward that he who is able to render the service consents to take in return for it. This is the measure of all *prices:* this is the measure of the value of all good things that are at once valuable and tangible. This is the measure of the value of all *labour*, by which things tangible are produced: as also of all labour by which, though nothing tangible is produced, valuable service in some other shape is rendered. This was the *common measure*, by which the exact value had been assigned to the *coat* he had on his back. This was the exact common measure of the value of those real services which had been rendered him by the person or persons by whom his coat had by means of one kind of brush, and his shoes by means of two others, been qualified for their attendance on the lips, by which this brilliant bubble was blown out.

But (says the sophist, or some disciple for him) there is no analogy between the service rendered to the public by a minister of state, and the service rendered to one individual, by another individual, who removes extraneous matter from his coat, or puts a polish upon his shoes.

O yes, there is,—and, to the purpose here in question, analogy quite sufficient:—

1. They stand upon the same ground (the two services) in point of *economy*. There is no more economy in paying £38,000 a-year for the wearer of the coat, if he can be had for nothing, than in paying £20 for a coat itself, if it can be had for £10.

For the wearer of the coat—I mean, of course, for his services: his *services*—I mean his services to the public, if so it be that he be capable of rendering any.

But the misfortune is, that when once the "*reward* for service" has swelled to any such pitch, any question about the service *itself—what* is it? what does it consist in? *who* is it that is to render it? what desire, or what *means*, has *he* of rendering it? of rendering to the public *that* sort of service, or *any* sort of service? Any question of this sort becomes a joke.

Where sinecures, and those "high situations" in which they have now and then become the subjects of conversation among "great characters," are taken for the subject of conversation

* In allusion to Burke's remark, that he did not know of "an exact common measure between real service and its reward."

among little characters in their low situations, questions and answers are apt to become giddy, and to turn round in a circle. What are sinecures of £38,000 a-year good for?—to maintain the sinecurists. What are the sinecurists good for?—to maintain the sinecures. Thus on profane ground. Thus again, on sacred ground:—What are bishoprics good for?—to support bishops. What are bishops good for?—to support bishoprics.—v. 294.

HOW TO MAKE OFFICES AND FILL THEM.

Made offices are partly the effects, partly the causes, of made business. Create useless work, you create the necessity of useless hands for the performance of it.

But it may happen, that, in the first instance, a determination may be taken to add at any rate to the number of hands: that done, there can be no difficulty in adding to the quantity of business for those hands. Take any given instrument, let it be signed by one person and one person only,—here you have but one office: put another person to sign it at another time, and under another official name, receiving of course a fee for this his trouble, here you have two offices: put a third person, three offices; and so on. Before, increase of business produced increase of offices: now, increase of offices produces increase of fees. In the latter case, is there, or is there not, any addition made to the quantity of business? Answer, Yes, or no; whichever is most convenient: Yes, because so much more is done; No, because what more is done is done to no use, and so does not properly deserve the name of business: it is John doing nothing, and Thomas helping him.—vii. 306.

NATURAL HISTORY OF OFFICIAL DEPREDATION.

Of the masses of emolument in question, viz. those attached to sinecure or overpaid judicial offices, it is the nature to go on increasing, as population and wealth increase, from year to year; and this, even in the way of *natural* increase, and setting aside whatsoever *factitious* increase may be contrived to be given to them by the combined ingenuity of the partnership. But by any allowances that should be given in lieu of them, under the name of *equivalents*, no such increase would be experienced: they would be *fixed* sums in the nature of *pensions*.

Of those ever-increasing masses of emolument, not only the *possessors*, but the *expectants*, know of course much better than to submit to any *commutation*, so long as, by any means not punishable, it appears possible to avoid it.

Pillaging the future as well as the present, the *Gavestons* and *Spensers* of successive ages—nor let the present be forgotten—contrived to obtain in *expectancy* those masses of ill-collected and ill-bestowed wealth, life after life. *Passion* and *policy* have here acted in alliance. Passion *seized* on the booty: policy rendered it the more *secure*. The more enormous the prey, the greater and more burthensome would be the *compensation* necessary to be given for it under the name of an *equivalent*. So long as the burthen falls on men whose afflictions are productive of no disturbance to the ease of the man of finance, it tells for nothing. So long as the burthen continues to be imposed by a tax which, though beyond comparison more mischievous than any other, was not of his imposition, the man of finance had no personal concern in the matter, and how enormous soever may be the mass of misery produced, it formed no object of his care. But to provide the compensation, if that came to be provided, was so much hard labour to him: while of those he has to deal with and to cajole, the great crowd is composed of such as care not what mischief is produced by a tax, or anything else they are *used to*, but cry out of course against everything of that sort, as of any other sort, when it is *new*.—v. 99.

THE VALUE OF IRRESPONSIBLE PATRONAGE.

Who is there that does not know that an office in a man's gift has a no less decided marketable value than an office of the same emolument in his possession? True it is that, compared with the value of the possession, the value of the patronage may be to any amount less: not less true is it, that it may also be, and that it not unfrequently is, fully equal. Let Lord Eldon say, how much less worth to him the many thousands a-year he has put into his son's pocket are, than if it had been his own? Let Mr Peel, if he feels bold enough, look into the documents, and tell us, in his place, how many those thousands are.

To the number of the offices, the emolument of which a man can pocket with his own hand, there are limits: to the number of the offices, the emoluments of which he can thus pocket through other hands, there are no limits; and, in any number of instances, the *protégé's* life may be worth more than the patron's.

Who is there that does not know, that the value of an office to the incumbent is directly as the emolument, and inversely as the labour? Who is there that does not know, that to the patron the value of it is directly as the inaptitude of the *protégé* he has it in his power to put in and keep in it, since the more consummate this inaptitude, the less his choice is narrowed? Who is there, for example, that does not know, that it is to the union of these two characters that spiritual offices in particular are indebted for their transcendent value? Who is there that can deny, that while this mode of payment lasts, interest is, in all judges, at daggers-drawn with duty?—that it is from this cause that suits take up as many years as they need do hours, and as many pounds as they need do pence?

Who is there that can deny, that it is from this cause that our system of judicial procedure is what it is?—and that, through the whole texture of it,—judges having been the manufacturers,—delay, expense, and vexation, having been maximized, for the sake of the profit extractible out of the expense?

Yes: by such hands made, to no other end could it have been directed.

The Chief-Justice of the King's Bench, has he not the nomination to the keepership of the prison named after his judicatory? If so, then to the profits of the bench are added the profits of the tap: and the money which justice would have returned to the hands of the creditor, is extracted, through this channel also, into the pockets of the judge.—v. 339.

EFFECTS OF OFFICIAL SLOTH.

For the operations of the sinister interest created by the *love of ease*, every sort of cause, and every sort of judicatory, presents, almost in equal degree, a favourable theatre.

Instead of *love of ease*, say, for shortness, *sloth*: which, though under the Pagan dispensation, neither god nor goddess, not ranking higher than with *syrens*,* is not in our days the less powerful; whatsoever might have been her influence in those early times. It is to *sloth* that, by official persons of all sorts and sizes, but particularly the highest, sacrifices are made continually, and in all shapes: in all shapes, and in particular in that of *justice*, the only one which belongs to the present purpose.

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* . . . . . Improba Syren
Desidia. *Horace.*

Plutus is apt to betray *his* votaries: to him *justice* cannot readily be sacrificed but in a *tangible* shape. *Syren Desidia* keeps her secrets better: so well indeed, that without hard labour in other quarters, and in no small quantity, sacrifices made to her can seldom be brought to light. Even when a mischance of this sort happens to them, the mischief, be it ever so enormous, finds the public—the English public at least—comparatively indifferent to it. *John Bull*—the representative of this most enlightened of all publics—is a person somewhat hard of hearing, and unless by the chink of money, and that a good round sum—the irascible part of his frame is not easily put into a ferment: and, even then, it is not so much by the mischief which the public suffers, be it ever so heavy, as by the sum of money which the wrong-doer pockets, be it ever so light, that his fire is kindled. Mischief, if the truth may be spoken, does not much disquiet him, so long as he sees nobody who is the better for it.—v. 90.

PROJECTS FOR IMPLEMENTING WAGES BY PAUPER RELIEF.*

What, in such case, shall be deemed this "*full rate or wages*," which is to be made up at all events, is a point that seems as necessary as it may be found *difficult* to be settled. In the compass of *England* and *Wales* some hundred thousands a-year may be at stake upon this single point. 1. Is it the full rate or wages of the *highest paid* species of labour in the district in question? Certainly not in *every* case. 2. Is it the "*full rate or wages*" of the highest paid species of labour where the employment of the *individual* in question happens to be of that species? If so, we may have bad *ship-wrights* pensioned at 9s. a-week or a guinea, (according as day-work or piece-work is taken for the standard,) or bad *mathematical instrument* makers at half as much; *this* therefore was not intended. 3. Is it the "*full rate or wages*" according to an *average* taken of the earnings of *all* the species of employment exercised within the district *put together?* This, requiring a vast previous assemblage of *highly interesting* but hitherto *uncollected* documents, is what (for that as well as other reasons) can hardly have been intended. 4. Is it the "*full rate or wages*" *earned* in the species of employment *most abundant* in

* These remarks apply to a Bill brought in by Pitt in 1797, in which there is a clause for giving relief to every man who cannot earn "the full rate or wages usually given in his Parish."

the district, as the words "*usually given*" might seem to import? I should suppose nor *that* neither. 5. Is it the "*full rate or wages*" earned in the lowest (meaning the *lowest* paid) species of employment therein exercised? This I should *rather* think is what is meant, (or at least *upon this view* of the diversity *would* be meant,) because this construction would be the *least dangerous;* but this is not anywhere *expressed.*

Take even the *lowest paid* species of employment, the *quantum* of the earnings will be found to admit of great variation in *great towns* (the metropolis for example) compared with *distant country* places. There are country places in which it is not higher than 1s. a day; in London and the neighbourhood it can hardly be reckoned lower than 2s. With all this enormous difference in the *habitual* rate of *supply*, the *necessary* means of living are scarcely cheaper anywhere than in London. Are so many thousands of bad workmen then, with or without families, to receive near £32 a-year as a *minimum*, when less than £16 a-year is proved by experience to be enough for good ones? And who will stay in the country at single allowance if he can secure *double* allowance only by coming up to London, which, partly by a late Act, partly by this *intended Act*, everybody is enabled to do without disturbance? —viii. 443-444.

ON A PROJECT OF PROVIDING MONEY TO PAUPERS FOR THE PURCHASE OF COWS.*

It would be *something* in the way of security, though surely not much, if the cow were but safely lodged in the cow-house of the indigent to whom the possession of her is to be an inexhaustible spring of affluence. But even *this* security, slender as it is, is not provided. The capital is to be advanced, not in the shape of the *cow*, but in the shape of *hard money*, with which the object of this extraordinary bounty is left perfectly at liberty to lay in a fund either in *milk* or *gin*, according to his taste.

The cow *dies* or is *stolen*, or (what is much more likely) is *supposed* to be stolen, being clandestinely *sold* to an obliging purchaser at a distance. What is to be done? "*Want of relief*" warranted the *first* cow; the same cause will necessitate a *second* —limit who can the succeeding *series* of cows: The disappearance of the *first* cow (it may be said) will excite *suspicion;* the disap-

* In Pitt's Bill of 1797.

pearance of the second cow will *strengthen suspicion;* true, but upon a mere suspicion without *proof* will a family be left to *starve?* The utmost security then amounts to *this*, that to a certain number of successive pensions thus *bought out* will succeed a pension which will *not* be bought out.

By donations or loans of this sort, made by gentlemen, of high amount to deserving individuals, selected from such of their tenants or dependants as have been fortunate enough to be comprised within the circle of their notice, *good* is said to have been done in certain instances. I make no doubt of it. Milk is a wholesome as well as pleasant beverage; milk is particularly good for children. Thirty pounds, twenty pounds, or even ten pounds, cannot but form a very comfortable accession to the property of an individual who happens at the time to be suffering under the pressure of indigence. When at his *own* expense a man administers charity in so large a mass, it would be extraordinary indeed if he did not pay a *considerable* attention to the propriety of the application of it; and should the *object* prove *less deserving* than was supposed, or the *benefit* less *permanent* than was hoped, there is at least no *immediate perceptible* harm done to any *assignable* individual. But while the hands by which the bounty is to be dealt out remain in the clouds, or were they even lying upon the table, it seems rather too much to expect *equal* attention, or even, in general, *sufficient* attention, when the *praise* and the *thanks* are reaped by the hands which thus disseminate the bounty, while the burden of it rests on the shoulders of third parties.—viii. 447.

PATENTS FOR INVENTIONS.

With respect to a great number of inventions in the arts, an exclusive privilege is absolutely necessary, in order that what is sown may be reaped. In new inventions, protection against imitators is not less necessary than in established manufactures protection against thieves. He who has no hope that he shall reap, will not take the trouble to sow. But that which one man has invented, all the world can imitate. Without the assistance of the laws, the inventor would almost always be driven out of the market by his rival, who finding himself, without any expense, in possession of a discovery which has cost the inventor much time and expense, would be able to deprive him of all his *deserved* advantages, by selling at a lower price. An exclusive

privilege is of all rewards the best proportioned, the most natural, and the least burthensome. It produces an infinite effect, and it costs nothing. "Grant me fourteen years," says the inventor, "that I may reap the fruit of my labours; after this term it shall be enjoyed by all the world." Does the sovereign say, "No, you shall not have it," what will happen? It will be enjoyed by no one, neither for fourteen years nor afterwards: everybody will be disappointed—inventors, workmen, consumers—everything will be stifled, both benefit and enjoyment.

Exclusive patents in favour of inventions have been long established in England. An abuse, however, has crept into the system of granting them, which tends to destroy the advantage derivable from them. This privilege, which ought to be gratuitous, has afforded an opportunity for plundering inventors, which the duration of the custom has converted into a right. It is a real conspiracy against the increase of national wealth.

We may picture to ourselves a poor and timid inventor, after years consumed in labour and uncertainty, presenting himself at the Patent Office to receive the privilege which he has heard that the law bestows upon him. Immediately the great officers of the crown pounce upon him together, as vultures upon their prey:—a solicitor-general, who levies four guineas upon him; a keeper of the privy seal, four guineas and a half; a keeper of another seal, four guineas; a secretary of state, sixteen guineas; the lord chancellor, who closes the procession, as the first in dignity, so also the first in rapacity,—he cannot take less than twenty-six guineas.* Need it be added, that in carrying on this process of extortion, recourse is had to fraud—that the individual applying for a patent is referred from office to office, that different pretexts may be afforded for pillage—that not one of these officers, great or small, takes the trouble to read a single word of the farrago of nonsense which they sign, and therefore that the whole parade of consultation is only a farce.†—iii. 71-72.

* If a patent be taken out for each of the three Kingdoms, the expense is estimated at £120 for England, £100 for Scotland, and £125 for Ireland. *Vide* Commons' Report on Patents.—*Ed.*

† It is scarcely necessary to remark, that in blaming the abuse, no reproach is intended to be cast upon the individuals, who, finding it established, profit by it. These fees form as lawful a portion of their emoluments as any other. It is, however, to be desired, that in order to put a stop to this insult and oppression, an indemnification were granted at the public expense, equal to the average value of these fees. If it be proper to levy a tax upon patents, it ought, instead of being levied in advance upon capital, to be postponed till the patent has produced some benefit.

BOUNTIES.

In the case of *bounties upon exportation*, the error is not so palpable as in that of *bounties upon production*, but the evil is greater. In both cases, the money is equally lost: the difference is in the persons who receive it. What you pay for production, is received by your countrymen—what you pay for exportation, you bestow upon strangers. It is an ingenious scheme for inducing a foreign nation to receive tribute from you without being aware of it; a little like that of the Irishman who passed his light guinea, by cleverly slipping it between two halfpence.

* * * * * * * * *

The Irishman who passed his light guinea was very cunning; but there have been French and English more cunning than he, who have taken care not be imposed upon by his trick. When a cunning individual perceives you have gained some point with him, his imagination mechanically begins to endeavour to get the advantage of you, without examining whether he would not do better were he to leave you alone. Do you appear to believe that the matter in question is advantageous to you? He is convinced by this circumstance that it is proportionally disadvantageous to him, and that the safest line of conduct for him to adopt, is to be guided by your judgment. Well acquainted with this disposition of the human mind, an Englishman laid a wager, and placed himself upon the Pont Neuf, the most public thoroughfare in Paris, offering to the passengers a crown of six francs for a piece of twelve sous. During half a day he only sold two or three.

Since individuals in general are such dupes to their self-mistrust, is it strange that governments, having to manage interests which they so little understand, and of which they are so jealous, should have fallen into the same errors? A government, believing itself clever, has given a bounty upon the exportation of an article, in order to force the sale of it among a foreign nation: what does this other nation in consequence? Alarmed at the sight of this danger, it takes all possible methods for its prevention. When it has ventured to prohibit the article, everything is done. It has refused the six-franc pieces for twelve sous. When it has not dared to prohibit it, it has balanced this bounty by a counter-bounty upon some article that it exports. Not daring to refuse the crowns of six francs for twelve sous, it has cleverly slipped some little diamond between the two pieces of money—and thus the cheat is cheated.—iii. 62-63.

FALLACY OF COLONIAL MONOPOLIES.*

Does the monopoly you give yourselves against the growers of sugar so much as keep the price of sugar lower than it would be otherwise?—not a sixpence. Lower than the price at which the commodity is kept by the average rate of profit on trade in general, no monopoly can reduce the price of this commodity any more than of any other, for any length of time: you may keep your subjects from selling their sugars elsewhere, but you cannot force them to raise it for you at a loss. Lower than this natural price, no monopoly can ever keep it: down to this price, natural competition cannot fail to reduce it, sooner or later, without monopoly. Customers remaining as they were, without increase of the number of traders there can be no reduction of price. Monopoly, that is, exclusion of customers, has certainly no tendency to produce increase of the number of traders: it may pinch the profits of those whom it first falls upon, but that is not the way to invite others. Monopoly, accordingly, as far as it does anything, produces mischief without remedy. High prices on the other hand—the mischief against which monopoly is employed as a remedy—high prices, produced by competition among customers, cannot in any degree produce inconvenience, without laying a proportionate foundation for the cure. From high profits in trade comes influx of traders—from influx of traders, competition among traders—from competition among traders, reduction of prices; till the rate of profit in the trade in question is brought down to the same level as in others.

Were it possible for monopoly to keep prices lower than they would be otherwise, would it be possible for anybody to tell how much lower, and how many sixpences a-year were saved to sugar-eaters by so many millions imposed upon the people? No, never: for since, where the monopoly subsists against the producers, there is nothing but the monopoly to prevent accession of, and competition among the producers, competition runs along with the monopoly; and to prove that any part of the effect is produced by the monopoly, and not by the competition, is impossible.

Oh, but we have not done with them yet. We give ourselves another monopoly—we give ourselves the monopoly of their custom, and so we make them buy things dearer of us than they would otherwise, besides buying things of us which otherwise they would buy of other people, and so we make them pay us for governing them.

* Addressed to the citizens of France in 1793.

Mere illusion—In the articles which you can make better and cheaper than foreigners can, which you can furnish them with upon better terms than foreigners can, not a penny do you get in consequence of the monopoly, more than you would without it. You prevent their buying their goods of anybody but your own people: true: but what does this signify? you do not force them to buy of any one or more of your own people, to the exclusion of the rest. Your own people then have still the faculty of underselling one another without stint, and they have the same inducement to exercise that faculty under the monopoly as they would have without it. It is still the competition that sets the price. In this case as in the other, the monopoly is a chip in porridge. It is still the proportion of the profit of these branches of trade to the average rate of profit in trade that regulates this competition: it is still the quantity of the capital which there is to be employed in trade that regulates the average rate of profit in trade.

In the instance of such articles as you can *not* make better or cheaper than foreigners can, (in the instance of articles which you can *not* furnish them with on better terms than foreigners can,) it is still the same illusion, though perhaps not quite so transparent. Not a penny does the nation get, (I mean the total number of individuals concerned in productive industry of all kinds,) not a penny does the nation get by this preference of bad articles to good ones, more than it would otherwise. In France, any more than anywhere else, people do not get more by the goods they produce than if there were no such monopoly; for if the rate of profit in the articles thus favoured were higher one moment, competition would pull it down the next. All that results from the monopoly you thus give yourselves of the custom of your colonies is, that goods of all sorts are somewhat worse for the money all over the world than they would be otherwise. People in France are engaged to produce, for the consumption of the French Colonies, goods in which they succeed not so well as England, for example, instead of producing for their own consumption, or that of some other nation, goods in which they succeed better than England. People in England, on the other hand, being so far kept from producing the goods they could have succeeded best in, are in so far turned aside to the production of goods in which they do not succeed so well: and thus it is all the world over. The happiness of mankind is not much impaired, perhaps, by the difference between wearing goods of one pattern, and goods of another; but, though much is not lost,

perhaps, to anybody by the arrangement, what is certain is, that nothing is gained by it to anybody, and particularly to France.

Will you believe experience? Turn to the United States. Before the separation, Britain had the monopoly of their trade: upon the separation of course she lost it. How much less is their trade with Britain now than then? On the contrary, it is much greater.

All this while, is not the monopoly against the colonists, clogged with a *counter-monopoly*? To make amends to the colonists for their being excluded from other markets, are not the people in France forbidden to take colony produce from other colonies, though they could get it ever so much cheaper? If so, would not the benefit to France, if there were any from the supposed gainful monopoly, be outweighed by the burthen of that which is acknowledged to be burthensome? Yes—the benefit is imaginary, and it is clogged with a burthen which is real.

Monopoly therefore and counter-monopoly taken together, sugar must come the dearer to sugar-eaters, instead of cheaper: to a certain degree for a constancy; and much more occasionally, when the dearness occasioned by a failure of crops in the French colonies is, by the counter-monopoly against France, prevented from being relieved by imports from other colonies, where crops have been more favourable.

If monopoly favoured *cheapness*, which it does not, it would favour it to the neglect of another object, *steadiness* of price, which is of more importance. It is not a man's not having sugar to eat that distresses him: Crœsus, Apicius, Heliogabalus had no sugar to eat: what distresses a man, is his not being able to get what he has been used to, or not so much of it as he has been used to. The monopoly against the French colonies, were it to contribute ever so much to the cheapness of the price, could contribute nothing to the steadiness of it: on the contrary, in consequence of the counter-monopoly it is clogged with, its tendency is to perpetuate the opposite inconvenience, variation. Any monopoly which France gives herself against her colonies, will not prevent any of those accidents in consequence of which sugar is produced in less abundance in those colonies than at others: and when it is scarce there, the monopoly against France will prevent France from getting from other places where it is to be had cheaper.

How much dearer is sugar in countries which have no colonies than in those which have? Let those inquire who think it worth the while. They will then see the utmost which in any supposi-

tion it would be possible for the body of sugar-eaters in France to lose. Not that this loss could amount to anything like the above difference: for, in as far as those countries get their sugar from monopolized colonies, which must be through the medium of some monopolizing country, they get it loaded with the occasional dearth produced thus by the effects of the counter-monopoly above-mentioned, and loaded more or less with constant import taxes, besides the expense of circuitous freight and multiplied merchant's profit.

May not monopoly then *force down* prices? Most certainly. Will it not then *keep them* down? By no means. If I have goods I can make no use of, and there is but one man in the world that I can sell them to, sooner than not sell them, though they cost me a hundred pounds to make, I will sell them for sixpence. Thus monopoly will beat down prices.—But shall I go on making them and selling them at that rate? Not if I am in my senses. Thus monopoly will not keep down prices.—Hence then comes all the error in favour of monopolies—from not attending to the difference between forcing down prices and keeping them down.

When an article is dear, it is by no means a matter of indifference, whether it is made so by freedom or by force. Dearth which is natural is a misfortune: dearth which is created is a grievance. Suffering takes quite a different colour, when the sense of oppression is mixed with it. Even if the effect of a monopoly is nothing, its inefficiency as a remedy does not take away its malignity as a grievance.—iv. 412-413.

TRADE THE CHILD OF CAPITAL.*

I will tell you a great and important, though too much neglected truth. TRADE IS THE CHILD OF CAPITAL: In proportion to the quantity of capital a country has at its disposal, will, in every country, be the quantity of its trade. While you have no more capital employed in trade than you have, all the power on earth cannot give you more trade: while you have the capital you have, all the power upon earth cannot prevent your having the trade you have. It may take one shape or another shape; it may give you more foreign goods to consume, or more home goods; it may give you more of one sort of goods, or more of another; but the quantity and value of the goods of all sorts it gives you, will always be the same, without any difference which

* Addressed to the citizens of France in 1793.

it is possible to ascertain or worth while to think about.—I am a merchant, I have a capital of £10,000 in trade: Suppose the whole Spanish West Indies laid open to me, could I carry on more trade with my £10,000 than I do now? Suppose the French West Indies shut against me; would my £10,000 be worth nothing? If every foreign market were shut up against me without exception, even then would my £10,000 be worth nothing? If there were no sugar to be bought, there is at any rate land to be improved. If a hundred pounds' worth of sugar be more valuable than a hundred pounds' worth of corn, butcher's meat, wine or oil, still corn, butcher's meat, wine and oil are not absolutely without their value. If article after article, you were driven out of every article of your foreign trade, the worst that can happen to you would be the being reduced to lay out so much more than otherwise you would have laid out in the improvement of your land. The supposition is imaginary and impossible: but if it were true, is there anything in it so horrible?

Yes—it is *quantity of capital*, not *extent of market*, that determines the quantity of trade. Open a new market, you do not, unless by accident, increase the sum of trade. Shut up an old market, you do not, unless by accident, or for the moment, diminish the sum of trade. In what case then is the sum of trade increased by a new market? If the rate of clear profit upon the capital employed in the new trade is greater than it would have been in any old one, and not otherwise. But the existence of this extra profit is always taken for granted, never proved. It may indeed be true by accident: but another thing is taken for granted which is never true; it is, that the *whole* of the profit made upon the capital, which, instead of being employed in some old trade, is employed in this new one, is so much addition to the sum of national profit that would otherwise have been made: What is only *transferred* is considered as *created*. If after making 12 per cent. upon a capital of £10,000 in an old trade, a man made but 10 per cent. upon the same capital in a new trade, who does not see, that instead of gaining £1200 a-year, he, and through him the nation he belongs to, loses £200 by the change: and so it is, if instead of one such merchant there were a hundred. Instead of this £200 a-year loss, your *comités de commerce* and boards of trade set down to the national account £1000 a-year gain: especially if it be to a very distant and little-known part of the world, such as a southern whale-fishery, a revolted Spanish colony, or a Nootka Sound: and it is well if they do not set down the whole capital of £10,000 as gain into the bargain.—iv. 411.

Should the new market be more advantageous than the old ones, in this case the profit will be greater—the trade may become more extended; but the existence of this extra profit is always supposed but never proved.*

The mistake consists in representing all the profit of a new trade as so much added to the amount of national profit, without considering that the same capital employed in any other branch of trade would not have been unproductive. People suppose themselves to have *created*, when they have only *transferred*. A minister pompously boasts of certain new acquisitions, certain establishments upon far distant shores; and if the adventures which have been made have yielded a million of profit, for example, he does not fail to believe that he has opened a new source of national wealth; he supposes that this million of profit would not have existed without him, whilst he may have occasioned a loss: he will have done so, if the capital employed in this new trade have only yielded ten per cent., and that employed in the ordinary trade have yielded twelve.

The answer [to the alleged profitableness of colonies] may be reduced to two points:—1. That the possession of colonies is not necessary to the carrying on of trade with them; 2. That even when trade is not carried on with the colonies, the capital which such trade would have required, will be applied as productively to other undertakings.—iii. 54.

TAXATION.

Once upon a time—in the senate-house of Gotham—a motion was made, to impose upon everybody a tax, and put the whole produce of it into everybody's pocket. Hear him! hear him! hear him! was the cry. The motion passed by general acclamation. *Quere*, Of the Gotham senate-house, what was the distance from St. Stephen's?—v. 269.

* Bryan Edwards, in his History of the West Indies, even in exaggerating the utility of colonies, does not suppose the rate of profit upon capitals employed in the plantations greater than seven per cent., whilst it is fifteen per cent. upon capital employed in the mother-country.†

† This fifteen per cent. was taken from one of the finance pamphlets of Treasury Secretary Rose. Some years before, to a question put by me to the late Sir Francis Baring, the answer was, six per cent. This meant, of course, over and above interest, then at five per cent.—*Communicated by the Author.*

RELATION OF LUXURY TO NATIONAL POWER.

A stock of instruments of mere enjoyment presupposes, on the part of each individual, a preassured stock of the articles of subsistence. The stock of articles of subsistence capable of being produced and kept up in a country, in any other view than that of exchange, has its limits: it can never extend much beyond the stock necessary for the subsistence of the inhabitants—the stock of instruments of mere enjoyment is without limit.

It is only in respect and in virtue of the quantity of the stock of instruments of mere enjoyment, that one country can exceed another country in wealth. The quantity of wealth is as the quantity of its instruments of enjoyment.

In cases where, two articles of subsistence contributing in an equal degree to that end, one contributes in a greater degree to enjoyment, (as is testified by the greater price given for it,) it may be considered as possessed of a compound value, which by analysis may be resolved as it were into two values; one belonging to it in its capacity of an article of subsistence, the other in its capacity of an article of mere enjoyment.*

It is out of the fund for enjoyment that the portion of wealth allotted to *defence*, and the portion, if any, allotted to security in respect of subsistence, must be taken: for out of the portion allotted to subsistence none can be spared.

But though security increase in proportion as opulence increases, and inequality be an inseparable accompaniment of opulence, security does not increase in proportion as inequality increases. Take away all the ranks in respect of opulence, between the highest and the lowest—the inequality will be increased, but the degree of security will be diminished.

Luxury is not only an inseparable accompaniment to opulence, but increases in proportion to it. As men rise one above another in the scale of opulence, the upper one may, without excess, give into expenses which those below cannot give into without prodigality. It is therefore no more desirable that luxury should be

* In the character of an article of subsistence, a pound of potatoes and a pound of pine-apples may stand pretty nearly upon the same level;—but a single pound of pine-apples may sell for the same price as one hundred pounds of potatoes,—the pound of potatoes selling for a halfpenny, and the pound of pine-apples for one hundred halfpence. This being the case, out of the hundred halfpence, which is the price and value of the pound of pine-apples, one halfpenny goes to subsistence, and the remaining ninty-nine to mere enjoyment. It is the same thing as if the halfpenny had been employed in the purchase of another pound of potatoes, and the remaining ninety-nine in the purchase of perfumed powder for the hair, instead of being put into the mouth for nourishment.

repressed, than it is that opulenèe should be repressed—that is, that security should be diminished. If it were desirable that luxury should be repressed, it could be done no otherwise than either by depriving the more opulent classes of a part of their property in this view, or coercing them in the use of it. It would be less unreasonable to restrain prodigality wherever it is to be found, than to restrain the highest imaginable pitch of luxury on the part of those whose expense does not exceed their income.—iii. 37-38.

THE "LUSTRE," "DIGNITY," &c., OF THE CROWN.

Viewed in their true point of view, and understood in their *literal* sense—these same words, *lustre* and *splendour*, may be *not* altogether useless:—they are not altogether uninstructive. Of *lustre* and *splendour*, taken in *this* sense, what is the effect? To *dazzle* the eyes of beholders: to cause them to see the objects in question confusedly and falsely: in a word, to put these same beholders into, and keep them in a state of *delusion*.

Ancient history tells of an "ancient, sage philosopher," who took it into his head that he should, somehow or other, be the better off for being stark blind; and, accordingly, contrived to make himself so by means of the *splendour* and *lustre* of a brass basin. Of this philosopher the philosophy will, without much difficulty, be pronounced "*false philosophy*;" and surely, with as little difficulty, may that *philosophy* be pronounced *false*, which prescribes the consigning human creatures by thousands to lingering death, for the support of the lustre, and splendour, and dignity of *coronets*, not to speak of *crowns*.

So much for *dignity*, *lustre*, and *splendour*; or lustre, splendour, and dignity. Now for *honour* and *glory*.

As, on their part, *dignity*, *lustre*, and *splendour*, are, in our proverbial language, "*birds of a feather*," and as such "flock together,"—so, on their part, are *honour* and *glory*. These derive from their relation to *war* the chief part of their relative use: in them may be seen, at once, a seed and a fruit of it.

In *honour*, we in England possess four letters which, of themselves, will, at any time, afford a sufficient ground and justification for war,—for war with anybody or everybody. Such, at any rate, was the aphorism—pronounced once, at least, upon a time—oftener, for aught I know—in our *honourable House*, by

the then leader, and the now idol, of our Whigs.* Of the state of things called *war*,—which being interpreted, is *homicide*, *depredation*, and *destruction*—human suffering produced in all manner of shapes upon the largest scale,—of this so illustriously serviceable state of things, the efficient causes might, all but *one*, according to his principles, be suffered to remain without effects: not so any the slightest wound received by *honour*.

Of this *rhetoric*, what is the correspondent *logic?* *Answer*—That whenever, and to whatever end of your own, and against whatsoever nation, you take a fancy to make war,—if, being a statesman, you condescend to *plead a justification* for it, you stand up, give the appropriate sound to the four letters, *h*, *o*, *n*, and *r*, and your justification is made: always understood, that you must pronounce the word with a certain degree of *loudness*, and that while you are pronouncing it, your cheeks must exhibit a certain degree of *intumescence*, and your eyes a certain degree of *fierceness*. —iv. 438.

HOW TO MAKE USE OF DECEPTIOUS TERMS.

1. In the war department,—*honour* and *glory*.
2. In international affairs,—*honour*, *glory*, and *dignity*.
3. In the financial department,—*liberality*. It being always at the expense of unwilling contributors that this *virtue* (for among the *virtues* it has its place in *Aristotle*) is exercised—for *liberality*, *depredation* may, in perhaps every case, and without any impropriety, be substituted.
4. In the higher parts of all official departments, *dignity*—*dignity*, though not in itself depredation, operates, as often as the word is used, as a pretence for, and thence as a cause of depredation. Wherever you see *dignity*, be sure that money is requisite for the *support* of it; and that, in so far as the dignitary's own money is regarded as insufficient, public money,—raised by taxes imposed on all other individuals, on the principle of *liberality*,—must be found for the supply of it.

Exercised at a man's own expense, liberality may be, or may not be, according to circumstances, a virtue:—exercised at the expense of the public, it never can be anything better than vice. Exercised at a man's own expense,—whether it be accompanied with prudence or no—whether it be accompanied or not with be-

* Written in 1830.

neficence,—it is, at any rate, disinterestedness:—exercised at the expense of the public, it is pure selfishness: it is, in a word, depredation. Money, or money's worth, is taken from the public to purchase, for the use of the liberal man, respect, affection, gratitude, with its eventual fruits in the shape of services of all sorts—in a word, reputation, power.

When you have a practice or measure to condemn, find out some more general appellative, within the import of which the obnoxious practice or measure in question cannot be denied to be included, and to which you, or those whose interests and prejudices you have espoused, have contrived to annex a certain degree of unpopularity, in so much that the name of it has contracted a dyslogistic quality—has become a bad name.

Take, for example, *improvement* and *innovation*. Under its own name to pass censure on any improvement, might be too bold: applied to such an object, any expressions of censure you could employ might lose their force; employing them, you would seem to be running on in the track of self-contradiction and nonsense.

But improvement means something new, and so does *innovation*. Happily for your purpose, *innovation* has contracted a bad sense; it means something which is new, and bad at the same time. Improvement, it is true, in indicating something new, indicates something good at the same time; and therefore, if the thing in question be good as well as new, innovation is not a proper term for it. However, as the idea of *novelty* was the only idea originally attached to the term innovation, and the only one which is directly expressed in the etymology of it, you may still venture to employ the word innovation, since no man can readily and immediately convict your appellation of being an improper one upon the face of it.

With the appellation thus chosen for the purpose of passing condemnation on the measure, he by whom it has been brought to view in the character of an improvement, is not (it is true) very likely to be well satisfied: but of this you could not have had any expectation. What you want is a pretence which your own partisans can lay hold of, for the purpose of deducing from it a colourable warrant for passing upon the improvement that censure which you are determined, and they, if not determined, are disposed, and intend to pass on it.—ii. 437.

CONNEXION BETWEEN THOUGHT AND LANGUAGE.

In regard to language, two perfectly distinguishable functions may be observed—the intransitive and the transitive.

In respect of its intransitive function, it, as it were, amalgamates itself with thought; it forms no more than a sort of clothing to thought.

In respect of its transitive function, it is the medium of communication between one mind and another, or others.—viii. 228-229.

So much more conspicuous is the *transitive* use of discourse, or language, that, in comparison with it, the intransitive seems scarcely to have obtained notice.

In importance, however, it is second only to the transitive use. By its transitive use, the collection of these signs is only the vehicle of thought; by its intransitive use, it is an instrument employed in the creation and fixation of thought itself. Unclothed as yet in words, or stripped of them, thoughts are but dreams: like the shifting clouds of the sky, they float in the mind one moment, and vanish out of it the next. But for these fixed and fixative signs, nothing that ever bore the name of *art* or *science* could ever have come into existence. Whatsoever may have been the more remote and recondite causes, it is to the superior amplitude to which, in respect of the use made of it in his own mind, man has been able to extend the mass of his language, that, as much as to anything else, man, it should seem, stands more immediately indebted for whatsoever superiority in the scale of perfection and intelligence he possesses, as compared with those animals who come nearest to him in this scale.

Without language, not only would men have been incapable of communicating each man his thoughts to other men, but, compared with what he actually possesses, the stock of his own ideas would, in point of number, have been as nothing; while each of them, taken by itself, would have been as flitting and indeterminate as those of the animals which he deals with at his pleasure. —viii. 301.

AMBIGUITY AND OBSCURITY.

Ambiguity is where the effect of the expression employed is to present in conjunction divers imports, in such sort, that though to the individual mind in question it appear clear enough that in

one or other of them is to be found the import which by the legislator was intended to be conveyed, yet which it is that was so intended to be conveyed, is matter of doubt.

Obscurity is where, of the expression employed, the effect is, for the present at least, not to present any one import, as that which by the author or authors of the portion or portions of law in question, was on the occasion in question intended to be conveyed.

In the case of ambiguity, the mind is left to float between two or some other determinate number of determinate imports :—in the case of obscurity, the mind is left to float amongst an indeterminate, and it may be an infinite number of imports. Obscurity is ambiguity taken at its maximum.—iii. 239.

RULES FOR CLEARNESS IN STYLE.

Rule I. When the language affords a word appropriated exclusively to the expression of the import which alone it is your intention to express, avoid employing any word, which is alike applicable to the expressing of that import, and a different one which may require to be distinguished from it.

Examples :—Substantives, adjectives, adverbs,—in the instance of all these parts of speech, frequent breaches of this rule may be found.

I. Substantives.—1. The word *taste* employed instead of the word *relish*. To *relish* a thing is to taste it with pleasure. Do you relish this peach? In this question there is no ambiguity, not even for a moment. But instead of this oftentimes we find,—Do you taste this peach? and so in the case of almost any other source of pleasure ; for example, a poem, a sonata, a building, a landscape.

In the French language there exists no appropriate word by which pleasure is represented as an accompaniment of the perception indicated ; no word expressive of, *I taste with pleasure*. *Gouter* is *to taste ;* and for *to relish* there is again this word, and no other. In French, therefore, this imperfection, this ambiguity and inadequacy, this incompleteness, and consequent incorrectness of expression, is the result of necessity. In the word taste, when employed instead of the word relish, this imperfection is needlessly and inelegantly copied. Why? Answer : From affectation and vain-glory, to give the hearer or reader to understand that the speaker or writer is so well acquainted with that foreign language, that it is more readily present to his memory than his own language.

II. Adjectives.—*Either* employed instead of *each*. To the word *either* belongs an exclusive signification, which belongs not to the word *each*. Where the idea of exclusion is not intended to be conveyed, how slovenly and absurd is it to employ a word by which the exclusion is expressed? Yet of negligence in this shape, examples are continually occurring.

Poetry is the species of composition in which it is most frequent. There it has its excuse,—1. In cases where the monosyllable *each* would *not*, so it may be that the dissyllable *either* will suit the measure. 2. In poetry, distinctness is less requisite than in prose. A uniform distinctness would even be incompatible with the nature of the composition, and fatal to the design of it. To produce, and keep up in the mind, confusion, so it be but accompanied with pleasure, is an object not of aversion, but of endeavour and study.

To affectation may the sin against propriety be imputed in this case, as well as in the last preceding one.

In saying *taste*, when he means *relish*, a man pleases himself with the thought of showing how familiarly he is acquainted with the language of *France*.

In saying *either* when he means *each*, a man pleases himself with the thought of showing how familiarly he is acquainted with the language of poetry.

Affectation the genus, pedantry the species; formerly the dress most frequently worn by pedantry was *Greek* and *Latin*; latterly, it is French and poetry.

To the ambiguity attached to this impropriety, one circumstance alone operates in some measure as a palliative. If so it be, that for predicating what you meant to predicate alike of two things, A and B, the word you have employed is a word by which one of them is excluded: conceive the word repeated, then, one after the other, they are both of them comprised. First introduce A without B, then introduce B without A,—both of them are introduced; but how much better would it not be if, without any such unintended exclusion, both were introduced at once.

All, *every*, *each*, *either*,—these collective adjectives are none of them absolutely incapable of being employed for and instead of any of the rest; but they have each of them its appropriate and most proper sense.

Thus it is throughout, in regard to words which with reference to one another, in common acceptance and discourse, pass for synonyms. Take any two of them; by neither, perhaps, is exactly the same idea expressed as is expressed by the other. In

many instances, however, so it is that without impropriety, and without inconvenience, one of them, perhaps either, may be employed instead of the other.

III. The word *future* employed instead of the word *subsequent*. *Future* and *subsequent* are both of them names of relations, terms of reference. By each of them, two portions of time, an *antecedent* and a *consequent*, are brought to view. By the term *subsequent*, the point of time brought to view in the character of an antecedent, is that which, with reference to the state of things or transaction *spoken of*, was present; this alone, and not the *time at which* that same state of things or transaction, is spoken of. Thus stands the matter, in so far as concerns the word *subsequent*. In the use of it nothing of ambiguity is to be found.

Now as to the term *future*; but for the context,—from which, upon reflection, it may be concluded that the time from which the futurity is reckoned, was the time when the state of things or transaction spoken of was present,—that time would always be the time in which the discourse, if oral was spoken, if in writing was written.

From the promiscuous use made of these two words, suited to very different purposes, confusion and absurdity are continually arising.

IV. Restrictives, such as *alone* and *only*. By these words, what is constantly understood is, that the purpose for which they are employed is the narrowing the import of some word or other to which they are respectively annexed; that which in many cases cannot be collected but from the context, nor from the context without some difficulty, is, to which, of all the words in the sentence, the restriction is meant to be applied.

1. Substantive in the nominative case, (*i. e.* name of the agent.) 2. Adjective agreeing with do., (*i. e.* quality ascribed to the agent.) 3. Verb. 4. Substantive in the accusative case, name of the patient. 5. Adjective, agreeing with do., (*i. e.* quality of the patient.) 6. Adverb, in the character of the name of a quality, of a quality annexed to one or other of the adjectives or to the verb; frequently to any one of these, with more or less propriety, may the restriction be considered as applicable.

In English, what thickens the confusion is, the indeterminate character of the restrictives, *alone* and *only*. Each of them is employed sometimes in the character of an *adjective*, sometimes in the character of an *adverb*; to exhibit the different cases in which each, in contradiction to the other, is most proper, would of itself be a task of no inconsiderable length.

Required to exhibit so many forms, by means of which in the

several cases, where the restriction is meant to be applied exclusively to the objects respectively signified by several parts of speech, it may in such sort be applied to these several subjects, that no misapplication whatsoever, howsoever transient and momentary, can take place.

To solve this problem would be a task of no inconsiderable length and labour,—but at the same time of no inconsiderable use.

If of the words alone, and only, the one were always an adjective, the other always an adverb, the difficulty of the task would be much less than it is; but, unfortunately, as has been just observed, no such constant distinction has place.

V. Ordinals: more especially the word *first*.

Of the aptitude of this term to involve in ambiguity the import of the sentence in which it is employed, the causes are of the same nature in this instance, as in that of the restrictives, *alone* and *only*, viz.—

1. Uncertainty of the part of speech, and thence of the subject, to which the attributive is meant to be applied.

2. Uncertainty in regard to the part of speech to which it is meant to be considered as belonging, viz. whether an adjective or an adverb.

Example of the mode in which the ambiguity may be avoided.

1. Ambiguous expression.—Columbus first saw Hispaniola.

2. Correspondent pair of sentences, by which the existence of the ambiguity, and at the same time, the mode of avoiding it, are indicated.

(1.) Columbus was the first person who ever saw Hispaniola.

(2.) Of the islands now called the West India Islands, Hispaniola was the first that Columbus discovered.

The plural number is, in a particular degree, liable to be productive of perplexity and misstatement.

Rule II. For remedy, substitute the singular to the plural number where substitutable without impropriety; and by one means or other it may generally be so substituted.

Rule III. Unless for special reason, by whatsoever name an object has once been designated, by that same name and no other, continue to designate it; or if, on any account, you find it matter of necessity or convenience to employ for that purpose this or that other name, take care to give notice of the change.

Eadem natura, eadem nomenclatura.

Whene'er the same nature,
The same nomenclature.

Converse of the above Rule.—Whatsoever be the object, for

the designation of which a given word has been employed, employ not that same word for the designation of any other object; unless so it be, that the word being a generic one, on the first occasion it was employed for the designation of the whole genus or of one species; on the other occasion, for the designation of another species of the same genus.

Rule IV. Prefer verbal substantives to verbs.

Numerous are the instances in which, for the giving expression to the import in question, a single word in the form of a verb, may in some sort suffice, and is frequently made to suffice; and a verbal noun from the same root, with the addition of some verb of extensive sign, and proportionally frequent use may also serve; as when, instead of *to apply*, the phrase *to make application* is used. From this substitution convenience is frequently found to result.

The noun from the same root is commonly a *verbal noun*; a *verbal noun* of that sort, which serves to designate, in the first place, the species of action, for the designation of which, the verb, including all the several adjuncts and modifications * belonging to that complex part of speech is used; and thence, by an almost imperceptible transition, the state of things produced by that same act.

This verbal noun, when thus obtained in a state of separation from these adjuncts, which form so many parts in the composition of the very complex part of speech called a verb, and which in this its separate state, becomes the name of a sort of fictitious entity, of a sort of fictitious body or substance, is, in this state, rendered more prehensible. Being thus prehensible, it is more easily, and thence directly, brought to view; and being thus brought to view, it is capable of being employed as a common subject to any number whatsoever of propositions that may be requisite for predicating, whatsoever the nature of the case requires to be predicated, of the sort of act in question, or of its result.

By means of a few verbs of extensive import, such as the above word *make*, capable of serving, as it were, in an *auxiliary* character, introduction may, in most cases, be given by each of them to a large number of names of fictitious entities, and the advantage in question compassed to the utmost extent, of which it is susceptible.

When a characteristic verb, thus capable of being resolved into a correspondently characteristic verbal noun-substantive and an

* Viz. the adjuncts designative of the time of an action, the number of the person or persons concerned in it, and the point of view in which in respect of certainty, the act in question was contemplated.

uncharacteristic auxiliary verb, has been employed, a practice not unfrequent is, to follow it by some relative which has for its antecedent the verbal noun, the import of which is implied in that of the characteristic verb; subjoining, or not subjoining, to it the antecedent noun thus implied.

Example 1. The implied antecedent brought to view as if repeated.

If you would gain the populace, upon every favourable occasion apply yourself to their senses; *this application* will do more for you than the closest train of reasoning.

2. The implied antecedent not brought to view, but only tacitly and implicitly referred to.

If you would gain the populace, apply yourself upon every favourable occasion to their senses; this will do more for you than the closest train of reasoning.

If the verbal noun, the name of the fictitious entity, * have, in a preceding sentence, been expressly brought to view, the repetition of it in the succeeding sentence, will have the good effect of reviving and strengthening the first impression. On the other hand, insert the verbal noun in the succeeding sentence, without having inserted it in the first, the consequence is that, in this way of speaking, a sort of false intimation is conveyed,—an intimation that the verbal noun employed in the succeeding sentence had already been employed in the preceding one.

Leave the verbal noun altogether uninserted, the result is still more awkward. "*This will do* so and so;" what is it that will do so and so? To this question no answer being given by the writer, the reader is left to hunt for one.

Rule V. When, for the designation of the idea in question, no other appellative is in use but one which is tainted with ambiguity, presenting, in conjunction with the idea required, another which is different from it, and which, on pain of being led into error by it, must be distinguished from it, or say, seen to be different from it,—substitute another word which is free from all ambiguity, presenting to view no idea other than that which is wished and endeavoured to be presented by it.

Example gathered from the field of penal law.—To acts considered as having been taken for the subjects of prohibition, is universally applied the appellation of *offence*. But when in regard to these acts, the desire is, to present to view the quality, or say,

* For an account of the division of entities into real and fictitious, see last section of the Analysis at the end of this volume.

property, on account of which they have been constituted, or it is in contemplation to constitute them, offences ; for conveying this idea, no other word is in use than this same word *offence*. By law the act is made an offence,—and why ? Answer : Because in its own nature it is an offence. Generally speaking, the idea, which in this case is associated with the word offence, is that of *maleficence*, that is to say, the property which the act, to which this appellative is attached, has, or is supposed to have, of making a defalcation more or less considerable, from the aggregate happiness of the community. In so far as the greatest-happiness principle is the ruling principle, on no other ground can any species of act be taken in hand by the legislator, and, by prohibition and eventual punishment, constituted an offence.

This ambiguity it has seemed to me matter of high importance to remove. Accordingly, continuing to employ the term offence, for designating the fact of the act having been taken for the subject of prohibition,—for the purpose of bringing to view the quality, in consideration of which it was my desire to see it thus dealt with, I employed the word *maleficence ;* giving to the act in which this quality was beholden by me, the appellation of a *maleficent act*.

Once having become sensible of the need there was of a word for this purpose, and having accordingly formed the determination of being on the *look-out* for such an one, I soon found that I had not far to look : *beneficent*, *beneficence*, were words already not only in the language but in every mouth ; in the language (the Latin) from which they were derived, correspondent and opposite to them I saw the words *maleficent* and *maleficence*.

Thenceforward, instead of not knowing what to say, unless it were in a roundabout way, or saying, this act is an offence, and therefore ought to be made an offence, it has been my custom to say the sort of act thus described is a *maleficent act*, and *that* in such sort and to such an amount, that by apt prohibition, backed by apt eventual suffering, it ought to be constituted an offence. —viii. 313-316.

AMBIGUITY OF THE PREPOSITION "OR."

Inserted between two words,—noun-substantives suppose,—it is employed with equal frequency, and without any the least discrimination, for two purposes altogether different : and is thus continually liable to give rise, either to interminable uncertainty,

er to any the most delusive and most mischievous misconceptions. The one is—that of giving to understand that what is meant to be said of the thing signified by the one, is not meant to be said of the thing signified by the other: the other, that they are but two words for one and the same thing: not to speak of a third case, in which the option is meant to be given between two things, for the designation of which the two words are employed. In other words, it is employed in either of the two so widely different senses, distinguished by the grammarians of classical antiquity, and, after them, by Harris, in his Hermes, by the two adjuncts, *disjunctive* and *sub-disjunctive: disjunctive*, when the two words are meant to be exhibited in the character of names of two different things; *sub-disjunctive*, when they are meant to be represented as different names of the one and the same thing.

A more frequently occurring, or a more frequently pernicious, imperfection will not easily be found in any language.

From this great blemish, the Greek language, as observed by Harris, is altogether free: it has one word for the *disjunctive* sense, and another for the *sub-disjunctive*.

Even the French language either is already exempt from this imperfection, or at any rate, with comparatively little difficulty, might be rendered free from it. *Ou*, or *ou bien*, it is believed, is *the* diction, or at any rate *a* diction employed, where the purpose is to present to view the *disjunctive* sense: employed it assuredly is in this sense, and, it is believed, seldom if ever employed in the other: while, when put between two substantives, *soit* is indubitably employed in the sub-disjunctive sense, and seldom, if ever, it is believed, in the disjunctive.

In English, if *or*, being confined to the disjunctive, *or say*, were the diction employed, and that exclusively, where the sense meant to be presented is the *sub-disjunctive*,—a blemish, so incompatible with certainty and clearness of conception, might thus be removed. But supposing the improvement were ever so desirable, how the introduction of it could be effected seems not very easy to conceive. The inconvenience of departure from habit is an inconvenience, which, in such a case, would be felt by everybody: by everybody, as well in the capacity of *speaker* or *writer*, as in that of *hearer* or *reader*.

The uneasiness produced by a violation of the law of custom, in matters of discourse, is an inconvenience to which everybody, without exception, is more or less sensible: want of precision—want of certainty—is an inconvenience to which, though in many cases so much more serious than the other is in any case, few indeed are sensible.

For this same purpose—viz. designation of the sub-disjunctive sense, the Latin word *alias*—a word already applied to this same purpose—would serve full as well, were it not for the displeasing idea attached to it by the use made of it on the occasions on which it is employed, in speaking of this or that man of bad character, who, to elude justice, has, at different times, assumed different names. For conveying to the eye the import in question, the well-known letters, *i. e.* might in some measure be made to serve: but *id est*, of which they exhibit the abbreviation, is crude Latin: and the correspondent English phrase would be felt to be insufferably long.—iii. 84-85.

FAMILIAR TERMS MISUNDERSTOOD.

What we are continually talking of, merely from our having been continually talking of it, we imagine we understand; so close a union has habit connected between words and things, that we take one for the other; when we have words in our ears we imagine we have ideas in our minds. When an unusual word presents itself, we challenge it; we examine it ourselves to see whether we have a clear idea to annex to it; but when a word that we are familiar with comes across us, we let it pass under favour of old acquaintance.

The long acquaintance we have had with it makes us take for granted we have searched it already; we deal by it, in consequence, as the custom-house officers in certain countries, who, having once set their seal upon a packet, so long as they see, or think they see that seal upon it, reasonably enough suppose themselves dispensed with from visiting it anew.—x. 75.

EFFECTS OF INACCURACY OF EXPRESSION.

In the history of French jurisprudence, a case, it is said, may be found, in which inaccuracy of expression cost a man his life. A witness having been examined in the presence of the defendant, and having been asked whether he was the person by whom the act was done, which he had seen done, answered in the negative. "Blessed be God!" exclaims the defendant—"here is a man—*qui ne m'a pas reconnu*—who has not recognised me." What he should have said—what he would have said, had he given a just expression to what he meant, was—"Here is a man *qui a reconnu*

que ce n'étoit pas moi—who has recognised, declared, that it was not I."—See Voltaire, "Essai sur les Probabilités en fait de Justice, Politique," &c., tom. ii.

Entire provinces, and even nations, have been taxed by a common opinion with a sort of endemial inaccuracy of expression. Nations the most distinguished for talent and genius, may be referred to as examples: and, in the case of these nations, inaccuracy of testimony has been in an equal degree the subject of remark. Of this inaccuracy, supposing it to be real, the state of the moral faculties appears commonly to have been looked to as the principal, if not the only, cause: but in the production of the effect, there seems little reason to doubt but that the state of the intellectual faculties may have possessed a considerable share. —vi. 253.

IRREGULAR NOUNS AND VERBS.

At an early period in the history of language, a word or sound of one sort was employed as a basis for one of the relations which are expressed by inflection, a word of another sort for another.

Fragments of the mass of language in the shape which it wore while in that imperfect state, are still to be seen, and that, it is believed, in every at present cultivated language.

These fragments may be seen in the composition of all those nouns and verbs which are regarded as being in any respect irregular, and which, on that account, are exhibited by grammarians in the character of irregular nouns and verbs.

By any person who will be at the trouble of reviewing them, these irregular parts of speech will, in every language, be found among those, for the import of which the demand is most frequent in its occurrence, and which, consequently, are in most general use. In the track of time the stage at which they first came into use, was that at which the number of words in use was not as yet sufficiently great for the labour attached to it, to have drawn men into the expedient of cultivating it by employing the principle and scheme of connexion for a multitude of mutually-related words, and thus substracting from the inconvenient multitude of different forms, with the import of which they would otherwise have had to make themselves acquainted. Such was the state of society,—such the state of the demand for discourse at the time when they first came into use. The demand never having diminished, thus it is that the actual use of them remains undiminished.

Thus it is that, of the history of language, no inconsiderable part remains to this day written upon the face of it.—viii. 327.

DRAWING ACTS OF PARLIAMENT.

On the one hand, clerks being paid for *copying*, according to the multitude of statutes and the length of each, and the confusion thus organized in each producing a perpetually-increasing demand for more—lawyers, on the other hand, being, *some* of them, paid in like proportion for the *drawing* of statutes, and *all* of them having everything to gain by the *confusion* that pervades the substance of the *several* statutes, and the *universal* and perpetually-increasing *uncertainty* in which that confusion beholds its fruit—hence this rule, by which it is provided, that an *act of parliament*, let it of itself constitute ever so considerable a volume, shall, like the mathematician's *point*, be a thing *without parts*, is a rule as sacred among these several learned and official persons, as any article in the 39 ever was to the most orthodox of the right reverend prelates that grace and sanctify the Upper House: and whoso should propose to abrogate it, would thereby become a worse than a popish or other *ipso facto* excommunicated convict —a malefactor *ipso facto* convicted of jacobinism.—v. 150.

PROLIXITY AND REDUNDANCY.

Prolixity may be where redundancy is not. Prolixity may arise not only from the multifarious insertion of unnecessary articles, but from the conservation of too many necessary ones in a sentence; as a workman may be overladen not only with rubbish, which is of no use for him to carry, but with materials the most useful and necessary, when heaped up in loads too heavy for him at once. The point is therefore to distribute the materials of the several divisions of the fabric into parcels that may be portable without fatigue.

There is a limit to the lifting powers of each man, beyond which all attempts only charge him with a burthen to him immoveable.

There is in like manner a limit to the grasping power of man's apprehension, beyond which if you add article to article, the whole shrinks from under his utmost efforts. In no science is this limit more necessary to be consulted [than in law,] in none has it been so utterly unattended to.—x. 74.

CONDUCT OF THE UNDERSTANDING IN COMPOSING.

Having found some word, however improper, to fix the idea, (upon the paper,) you may then turn it about and play round it at your leisure. Like a block of wood, which, when you have fixed in a vice, you may plane and polish at your leisure; but if you think to keep it in your hands all the time, it may slip through your fingers.—x. 73.

VALUE OF ORIGINALITY.

There are two classes of writers to whom the public is very little obliged: those who pretend to say something, and in effect say nothing; and those who say something, but say not what they think.

He who thinks, and thinks for himself, will always have a claim to thanks; it is no matter whether it be right or wrong, so as it be explicit. If it is right, it will serve as a guide to direct: if wrong, as a beacon to warn.

The needle directs as well to the South Pole, from whence it flies, as to the North which it pursues.

The paradoxes of Hobbes and Mandeville (at which divines affect to be so much scandalized) were of service: they contained many original and bold truths, mixed with an alloy of falsehood, which succeeding writers, profiting by that share of light which these had cast upon the subject, have been enabled to separate. —x. 73.

THE PRESUMPTION OF THOSE WHO CANNOT THINK FOR THEMSELVES.

He who, in place of reasoning deduced (if the subject be of a practical nature) from the consideration of the end in view, employs authority, makes no secret of the opinion he entertains of his hearers or his readers: he assumes that those to whom he addresses himself are incapable, each of them, of forming a judgment of their own. If they submit to this insult, may it not be presumed that they acknowledge the justice of it?

Of imbecility—at any rate of self-conscious and self-avowed

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imbecility—proportionable humility ought naturally to be the result;

On the contrary, so far from humility,—of this species of idolatry—of this worshipping of dead men's bones,—all the passions the most opposite to humility—pride, anger, obstinacy, and overbearingness,—are the frequent, not to say the constant, accompaniments.

With the utmost strength of mind that can be displayed in the field of reasoning, no reasonable man ever manifests so much heat, assumes so much, or exhibits himself disposed to bear so little, as these men, whose title to regard and notice is thus given up by themselves.

Whence this inconsistency?—whence this violence? From this alone, that having some abuse to defend—some abuse in which they have an interest and a profit—and finding it on the ground of present public interest indefensible, they fly for refuge to the only sort of argument in which so much as the pretension of being sincere in error can find countenance.—ii. 392.

THE TERMS "NATURAL HISTORY" AND "NATURAL PHILOSOPHY."

Of the two words,—the first an adjective, the other a substantive,—of which the compound appellation *Natural History* is formed,—it found, at the time of its formation, the substantive *History* already appropriated to the designation of a branch of learning, having for its subject those *states of persons and things* of all sorts, and those *events* of all sorts, that have been known or supposed to have had place in times *past:* present time either being altogether excluded, or its history being but as it were a point, in comparison with the time of history which it closes. Adding the word *natural*, say *Natural History*, the result is, that, for the import, designated by this appellative, antecedently to the establishment of that usage from which it has received an import so widely different, *we have this*, viz. the *natural* account of those *states of persons and things*, and so forth, and of those *events*, and so forth, which had place in times past.

Now, with what propriety, to any one of the above-mentioned so aptly denominated divisions of the branch of art and science itself thus unaptly denominated,—with what propriety to Mineralogy, to Botany, to Zoology,—can the term *Natural History*, consideration had of its original and proper import as thus developed, be applied?

* * * * * * * * *

The branch of art and science, for the designation of which the compound appellation *Natural Philosophy* is in use, is that which has, for its *subject*, *matter* in general, considered in respect of such modifications as it has been made, or may be expected to be made, to undergo, by human *art*, under the guidance of human *science:* with the addition, perhaps, of such properties, as, by means of changes made in it by the application of that same mental instrument, have been discovered to have been already belonging to it.

Taken by itself, *Philosophy* is *the love of wisdom.* Adding the word *natural*, say *Natural Philosophy*, and, for the import designated by this appellation, antecedently to the arbitrary usage, established in this case as in that other,—we have *this*, viz. *the natural love of wisdom.*—viii. 69.

THE MENTAL HISTORY OF ANALYSIS AND ARRANGEMENT.

Walking one day over his grounds, a certain husbandman observed a plant, which was not of the number of those which he was employed in cultivating. Overhanging some of them, it seemed to him to impede their growth. Taking out his knife, he cut the plant off just above the root; and a fire, in which he was burning weeds for the ashes, being near at hand, he threw it into the fire. In so doing, he had thus in two different modes performed, upon this physical *whole*, the physical *analysis*. By being cut as it was, it became divided into two parts, viz. the *root*, and that which was above the root: and thus in the *mechanical* mode was the physical analysis performed upon it. By its being thrown into the fire and there consumed, of the portion so cut off as above, part was made to fly off in the state of *gas*, the rest staid behind in the state of *ashes:* and thus in the *chemical* mode was the physical analysis performed upon it.

Not long after, came a daughter of his that same way, and a plant of the same kind which her father had thus cut down being left standing, her *attention* was caught by the beauty of it. It was a sweet-brier rose, of which one flower had just expanded itself. All parts of the plant were not alike beautiful. By one part her attention was more forcibly engaged than by the rest. It was the flower. To examine it more closely, she plucked it off, and brought it near her eye. During its approach, the scent

of it became perceptible; and thus another sense received its gratification. To prolong it, she tried to stick the flower in a part of her dress that covered her bosom. Meeting with some resistance, the stalk to which, with a few leaves on it, the flower was attached, was somewhat bruised; and now she perceived and distinguished another odour, which though not less agreeable, was somewhat different from the first.

All this while she had been performing upon this physical whole the logical operation termed *logical analysis:* performing it not the less, though, as in *Moliere's Bourgeois Gentilhomme* Monsieur Jourdan when talking *prose*, without knowing it. The *instrument*, by which this mental *operation* was performed by her, was the fictitious entity *attention*. By the attention which she bestowed upon the flower, while no equal degree of attention was bestowed upon any other part of the plant, she analyzed it—she mentally *resolved* or divided it—into *two* parts, viz. the *flower*, and all that was not the flower: and thus she distinguished part from part.

Again. By applying her attention, first to the *beauty* of the flower, composed as it was of the beauty of its *form* and the beauty of its *colour*, she performed on this same original subject *another* analysis, which though still a *logical* analysis, was productive of results somewhat different from those produced by the former; for thus, in the same *part* she distinguished two *properties* or *qualities;* viz. that of presenting to the sense of *sight* a peculiarly agreeable *appearance*, and that of presenting to the sense of *smell* a peculiarly agreeable *odour*. The *parts* were both of them *real* entities: the *qualities* were, both of them, *fictitious* entities.

Eager to communicate the discovery to a little brother of hers, she took him to the spot: she showed him the *plant* from which the flower had been plucked. The flower had already become a subject of conversation to them: that part had already received the name of *flower:* not having equally engaged her attention, the other part, like a sheep in a flock, or a pig in a litter, remained without any distinctive name.

Ere long her sweet-brier rose put forth two other blossoms; being so little different from the first, each of these became *flower* likewise. From a *proper* name, *flower* thus became a *common* name.

In the course of another social ramble, a *mallow* plant, with a flower on it, met her eye. At a distance the flower was not yet distinguished from that of the *sweet-brier rose*—"*Ah*," (cried she,) "*here is* flower *again*." The *sweet-brier*, on account of its

scent, which continued after the flower was gone, had been preserved: the *mallow*, having nothing but colour to recommend it, was neglected.

These rambles had not continued long, before other sweet-briers and other mallows met her eye. The former being regarded with interest, the other with comparative indifference, the occasion for distinguishing them in conversation was not unfrequently recurring. The *rose flower* became a *rose flower*, the *mallow flower* a *mallow flower*.

When the flower first observed was named *flower*, as yet nothing but *analysis—logical* analysis—had been performed; no operation of the nature of logical *synthesis:* of one individual object it was and no other, that the word *flower* had been made the name. But, no sooner was the *second* flower observed, and the same name *flower*, which had been applied to the first, applied to this other, than an act of logical *synthesis* was performed. The *proper* name was thus turned into a *common* one; and the fictitious entity, called a *sort*, a *kind*, a *species*, or a *genus*, (call it which you please,) was created.*

The *fictitious* entity being nothing at all, and the two *real* entities being each of them something, the *fictitious* entity itself did not contain within itself the two *real* entities, or either of them. But the name, which, after having occasionally been applied to each of the two *real* entities, became, by degrees, designative of the *fictitious* entity deduced from them, as above, by abstraction, continued to be employed for the designation of *either* of them, and occasionally for the designation of *both* of them together: and thus, in a sense, which, although not strictly proper, has the advantage of conciseness, the one *fictitious* entity, the *species*, may be said to have contained, and to contain, the two individual *real* ones: to *contain*, viz. though not in a *physical*, in a *logical* sense.

The analysis thus unconsciously performed by the maiden on the first-observed sweet-brier rose, viz. by applying her attention to one part, while it was not applied to the other, had for its subject the *real* entity, the physical whole. It may be termed the *primæval* or *primordial* analysis: for by no other sort of logical analysis will it be found capable of having been preceded. The

* *Genus* and *species* are words which cannot, either of them, be employed without impliedly asserting the existence of the other. Both are aggregates, or names of aggregates: *genus* is the whole, of which *species* is a part. Suppose but *one* aggregate, either of these names may as well be applied to it as the other; or rather, and for the above reason, neither can with propriety be applied to it.

analysis, by which the rose-flower became *rose-flower*, and the mallow-flower *mallow-flower*, had for its subject no other than the *fictitious* entity, the *logical* whole, viz. the *whole* designated, fixed, and, as it were, created, by the denomination *flower*, so soon as, after having been employed merely as a *proper* name, it had come to be employed as a *common*, and thence as a *specific* or *generic* name. It may be termed the *secondary* analysis, or analysis *of the 2d order*. In her young mind, and in this its simple form, this secondary mode of analysis had nothing in it of science, nothing of system. But in it may be seen the germ of all those systems of division which, being framed by scientific hands, have spread so much useful light over every portion of the field of art and science.

The maiden had for her sweetheart a young man, who, though not a member of the Company of Apothecaries, (for the company had not yet received its charter,) had, on his part, been engaged in a little train of observations, to an improved and extended series of which, together with the experiments which they suggested, some thousands of years afterwards that most useful and respectable community became indebted for its establishment.

He had observed his dog, after a full meal, betake itself to a grass-plat, and gnaw the grass: a sort of article which, when hungry, it had never been seen to meddle with. To this sagacious swain the maiden was not backward in reporting her abovementioned discoveries. It might, perhaps, have been not altogether impossible to obtain a communication of some of those observations and discoveries of his, for the purpose of adding them to hers. But, for the explanation of what has here been endeavoured to be explained, what has already been reported of the damsel's, will, it is hoped, be found to suffice, without any further trial of the reader's patience.—viii. 122-124.

ORDER AND METHOD.

Order—method—is among the instruments which intellectual vigour has to construct for the assistance of intellectual weakness, and which, when made, intellectual weakness assists itself by, in its endeavours to surmount the difficulties it has to contend with. But as, on one hand, the labour and difficulty of producing order, so, on the other hand, the demand for it increases with the magnitude of the mass—with the multitude of the elementary particles which compose it. Order—meaning good order—order the

best adapted to the purpose—consists in the selecting, out of the whole number of changes capable of being rung upon the number of elementary parts in question, that one of the whole number that will place the aggregate mass in the most intelligible point of view. The number of changes capable of being rung upon an assemblage of elementary parts, increases with the number of those parts:—increases with that rapidity of increase which is so familiarly and precisely known to mathematicians, and which is matter of so much astonishment to persons altogether unconversant with the first rudiments of that science. But, with the number of changes capable of being rung upon the elementary parts of the mass in question, increases the chance in favour of disorder and confusion,—the difficulty of producing order,—the difficulty of detecting the want of it,—the difficulty of pointing out the remedy for the want of it, for the purpose of insisting on the application of the remedy,—the facility of producing that sort and degree of disorder which shall weary out the energies of the inspecting eye, and force it to withdraw from the subject altogether, to save itself from the labour (perhaps the fruitless labour) of persevering in the endeavour to discover what has and what has not been said and done.—vi. 29.

BEGGING THE QUESTION.

In the minds of some men, (not to say the bulk of men,) if you set about proving the truth of a proposition, you rather weaken than strengthen their persuasion of it. Assume the truth of it, and build upon it as if indisputable, you do more towards riveting them to it than you could do by direct assertion, supported by any the clearest and the strongest proofs. By assuming it as true, you hold up to their eyes the view of that universal assent, or assent equivalent to universal, (dissenters being left out of the account,) which, from your assumption, they take for granted has been given to it: you represent all men, or (what comes to the same thing) all men whose opinions are worth regarding, as joining in the opinion: and by this means, besides the argument you present to the intellectual part of their frame, you present to its neighbour the volitional part another sort of argument, constituted by the fear of incurring the indignation or contempt of all reasonable men, by presuming to disbelieve or doubt what all such reasonable men are assured of.—vii. 451.

INFLUENCE OF FALLACIOUS DESIGNATIONS.

Amongst the instruments of delusion employed for reconciling the people to the dominion of the one and the few, is the device of employing for the designation of persons, and classes of persons—instead of the ordinary and appropriate denominations, the names of so many abstract fictitious entities, contrived for the purpose. Take the following examples :

Instead of Kings, or the King,—the *Crown* and the *Throne.*

Instead of Churchman,—the *Church,* and sometimes the *Altar.*

Instead of Lawyers,—the *Law.*

Instead of Judges, or a Judge,—the *Court.*

Instead of Rich men, or the Rich.—*Property.*

Of this device, the object and effect is, that any unpleasant idea that in the mind of the hearer or reader might happen to stand associated with the idea of the person or the class, is disengaged from it : and in the stead of the more or less obnoxious individual or individuals, the object presented is a creature of the fancy, by the idea of which, as in poetry, the imagination is tickled—a phantom which, by means of the power with which the individual or class is clothed, is constituted an object of respect and veneration.

In the first four cases just mentioned, the nature of the device is comparatively obvious.

In the last case, it seems scarcely to have been observed. But perceived, or not perceived, such, by the speakers in question, has been the motive and efficient cause of the prodigious importance attached by so many to the term *property :* as if the value of it were intrinsic, and nothing else had any value : as if man were made for property, not property for man. Many, indeed, have gravely asserted, that the maintenance of property was the only end of government.—ix. 76-77.

USES MADE OF THE WORD "CHURCH."

1. Among the Greeks, in its original acceptation, *Ecclesia* was employed to signify an assembly of any kind ; it was manifestly from the union of two words ἐκ and καλέω, which signified to call out, viz. for the purpose of a joint meeting, and more particularly of a joint meeting for a public, for a political purpose.

2. Thence, among such of the first Christians whose language was Greek, it came to signify, in particular, such assemblies as were held by these religionists, as such, whether for the purpose of devotion or conjunct economical management.

3. In an association of this kind there was commonly, at least, one member, whose occupation consisted in taking the lead in their common exercises of divine worship, and by the exposition of that book, or collection of books, which, by all of them, was recognised as constituting the standard of their faith and action, to administer instruction to the rest. The operations thus performed being considered as *serviceable*, with reference to the persons at whose desire they were performed, the persons by whom they were performed were, accordingly, sometimes designated, in consideration of such their services, *ministers*, the Latin word for servants; sometimes, in consideration of their age, *Presbyters*, from πρεσβυτεροι, which was the Greek word for Elders, *i. e.* for men of any description when advanced in age (from which word Presbyter, the French word *Prestre*, and the English word Priest;) sometimes, in consideration of their acting as overseers or overlookers, overlooking and overseeing, in relation to deportment, the behaviour of their disciples, the members of the association at large, Επισκοποι, *Episcopi*, whence the English word Bishop.

In process of time, those members of the association, whose occupation, originally with or without pay, consisted, on the occasion in question, in acting as the servants of all, came to act as rulers over the members at large, at first on this or that particular occasion, at length upon all occasions.

At this time, besides the other senses, of which mention will require to be made presently, the word Church came to signify, according to the purpose which, by those who were employing it, it was designed to serve, three very different assemblages of persons: viz. 1. The whole body of the persons thus governed; 2. The whole body of the persons thus employed in the government of the rest; and, 3. The all-comprehensive body, or grand total, composed of governed and governors taken together.

When the persons in question were to be spoken of in the character of persons bound to pay obedience, then by the word Church was meant to be designated these subordinate subject-members of the association,—in a word, the subject many. When the persons in question were to be spoken of in the character of persons to whom the others were bound to pay obedience, then by the same word were designated the *ruling few;* when, for the purpose of securing in favour of both parties, and especially of

the ruling few, the affections of respect and fear, then would the import of the word open itself, and to such an extent, as to include, under one denomination, the two parties whose situations and interests were thus opposite.

4. From designating, first, the act of calling together an assembly, then the assembly composed of all persons, and no other than all persons, actually assembled together at one and the same time in a particular place, and then all the persons who were regarded as entitled so to assemble at that place, it came also to be employed to designate the place itself at or in which such assembly was wont to be held: the *place* consisting of the *soil*, the portion of the earth's surface, on which, for containing and protecting the assembly from the occasional injuries of the weather, a *building* was erected, and such building itself when erected.

Such, as above, being the purpose for which the sort of building in question was erected, viz. the paying homage to God, God, although present at all times in all places, was regarded as being, in a more particular manner, present at and in all places of this sort; attentive to whatsoever was passing at all other places, but still more attentive to whatsoever was passing in these places.

Being thus, as it were, the dwelling-places of God, these places became to the members of the association objects of particular awe and reverence, of a mixture of respect and terror,—they became, in one word, holy; whereupon, by an easy and insensible transition, this mixture of respect and terror came to extend itself to, upon, and to the benefit of the class of persons in whose hands reposed the management of whatsoever was done in these holy places: holy functions made holy places, holy places and holy functions made holy persons.

On the score of beauty, admiration; on the score of kindness and tenderness, love; on the score of fitness for domestic management and rule, respect: these affections are in use to find their joint object in the character or relation designated by the word mother. Admiration, love, and respect, on the one part; all these are, on the other part, so many instruments of governance. The servants of the subject many had their assemblies for acting in such their capacity, and securing to themselves the faculty of continuing so to do. Of these assemblies, the members were, some young, some middle-aged, some elderly men. Upon contemplating themselves altogether in the mirror of rhetoric, it was found that of all these males put together was composed one beautiful female, the worthy object of the associated affections of admiration, love, and respect—the Holy Mother Church.

Besides this, this holy female was seen to possess a still greater quantity of holiness than could have entered into the composition of the aggregate mass of holiness composed of the separate holinesses of the several holy males of which she was composed, had they not, in the above-mentioned holy place been thus assembled and met together. By ordinances issued by this holy female, a greater and surer measure of admiration, respect, and consequent obedience, was obtained than would have been obtained by the assembly in its plain and original character of an assembly of males, notwithstanding all their holiness.

By this combination thus happily accomplished, an effect no less felicitous and convenient than it was holy, was produced; in the holy compound, while all the perfections of which both sexes are susceptible were found united, all imperfections, as if by chemical precipitation, were found to have been excluded. The holy men might, notwithstanding their holiness, have remained fallible; the Holy Mother was found to be infallible. Her title to implicit confidence, and its naturally inseparable consequence implicit obedience, became at once placed upon the firmest ground, and raised to the highest pitch.

Great is the scandal, great to all well-disposed eyes the offence, if to her own children, or any of them, a mother has been an object of contempt: proportioned to the enormity of the offence is the indignation of all well-disposed spectators, the magnitude of the punishment which they are content to see inflicted on the score of it, and the alacrity with which they are ready to concur in promoting the infliction of such punishment.

How much more intense that indignation, should any such indignity be offered to that holy character, should her servants, or even her ordinances, be violated. Flowing, from the maternity of this *holy*, this *sanctified*, this *sacred* character—to all these epithets the same venerated import belongs, they deserve the same respect: how convenient and useful the result!

When an edifice of the holy class has been erected and duly consecrated, proportioned to the holiness, the sanctity, the sacredness bestowed upon it in and by its consecration, is the enormity of any offence by which it has been profaned and its sanctity violated.

When, again, an edifice of the holy class has been erected and duly consecrated, the more sumptuous, the more magnificent, the more lofty, the more admirable, the more venerable the structure, the greater the calamity, the wider the ruin, the more intense the shock arising from its being subverted, the more intolerable the

apprehension of the danger of its being subverted, the more intense and implacable the indignation excited towards and pointed against all persons regarded or considered as capable of being the authors or promoters of so shocking a catastrophe.

Already has been seen the advantage derivable and derived by and to the rulers of the Church, themselves being that Church, by the creation of a Church capable of being violated.

Here may now be seen the advantage producible and produced by and to the same rulers of the Church from the creation of a Church, themselves being that Church, capable of being subverted.

By any unholy person is this holy will in any particular opposed, or threatened to be opposed,—that same sacrilegious, unholy, profane, unbelieving infidel, miscreant, reprobate person is already a violater, and, in intention, a subverter of the Church, worthy of all indignation, all horror, all punishment, all vengeance; which it is in the power of any dutiful and worthy son of the Church to contribute to pour down upon his devoted head.—viii. 249–251.

THE UNION OF 1707 AND THE ENGLISH CHURCH.

At the time of the intended union, the two states (not to embarrass the case by taking more than two at a time) are, with relation each to the other, in a greater or less degree foreign and independent states.

Of the two uniting states, one will generally be more, the other less, powerful. If the inequality be considerable, the more powerful state, naturally speaking, will not consent to the union, unless, after the union, the share it possesses in the government of the new-framed compound state be greater by a difference bearing some proportion to the difference in prosperity between the two states.

On the part of the less powerful state, precautions against oppression come of course.

Wherever a multitude of human beings are brought together, there is but too much room for jealousy, suspicion, and mutual ill-will.

In the apprehension of each, the others, if they obtain possession of the powers exercised by the common government, will be supposed to apply them unjustly. In men or in money, in labour or in goods, in a direct way or in some indirect one, it may be the study of the new compound government, under the

influence of that part of the quondam government which is predominant in it, to render the pressure of the contributions proportionably more severe upon the one portion of the new compounded state than upon the other, or to force upon it new customs, new religious ceremonies, new laws.

Let the hands of the new government remain altogether loose: one of the two compound nations may be injured and oppressed by the other.

Tie up the hands of the government in such degree as is requisite to give to each nation a security against injustice at the hands of the other: sooner or later comes the time in which the inconveniences resulting from the restriction will become intolerable to one or other, or to both.

But sooner or later the very duration of the union produces the natural remedy.

Sooner or later, having for such or such a length of time been in the habit of acting in subjection to one government, the two nations will have become melted into one, and mutual apprehensions will have been dissipated by conjunct experience.

All this while, in one or both of the united states, the individuals will be but too numerous and too powerful, who by sinister interest and interest-begotten prejudice will stand engaged to give every possible countenance and intensity to those fears and jealousies—to oppose to the entire composure of them every degree of retardation.

If in either of the united communities, at the time of the union, there existed a set of men more or less numerous and powerful, to whom abuse or imperfection in any shape was a source of profit; whatsoever restrictions may have been expressed in the contract, these restrictions will of course be laid hold of by the men thus circumstanced, and applied as far as possible to the giving protection and continuance to a state of things agreeable or beneficial to themselves.

At the time of the union between England and Scotland, the Tory party, of whom a large proportion were Jacobites, and all or most of them high-churchmen, had acquired an ascendant in the House of Commons.

Here, then, a favourable occasion presented itself to these partisans of Episcopacy, for giving perpetuity to the triumph they had obtained over the English Presbyterians, by the Act of Uniformity proclaimed in the time of Charles the Second.

In treaties between unconnected nations, where an advantage in substance is given to one, for the purpose of saving the honour

of the other, it has been the custom to make the articles bear the appearance of reciprocity upon the face of them ; as if, the facilitating the vent of French wines in England being the object of a treaty, provision were made in it that wine of the growth of either country might be imported into the other, duty free.

By the combined *astutia* of priestcraft and lawyercraft, advantage was taken of this custom to rivet for ever those chains of ecclesiastical tyranny which, in the precipitation that attended the Restoration, had been fastened upon the people of England. For securing the 45 Scotch members from being outnumbered by the 513 English ones, provision had been made in favour of the Church of Scotland : therefore, on the principle of reciprocity, for securing the 513 English members from being outnumbered by the 45 Scotch ones, like provision was made in favour of the Church of England.—ii. 405.

THE WISDOM OF OUR ANCESTORS.

It is singular, that the persons who are most loud in magnifying the pretended advantage, in point of wisdom, of ancient over modern times, are the very same who are the most loud in proclaiming the superiority, in the same respect, of old men above young ones. What has governed them in both cases seems to have been the prejudice of names. It is certain, that if there be some reasons why the old should have advantage over the young, there are, at least, the same reasons for times that are called modern, having it over times that are called ancient. There are more ; for decrepitude, as applied to persons, is real : as applied to times, it is imaginary. Men, as they acquire experience, lose the faculties that might enable them to turn it to account : it is not so with times : the stock of wisdom acquired by ages, is a stock transmitted through a vast number of generations, from men in the perfection of their faculties, to others also in the perfection of their faculties : the stock of knowledge transmitted from one period of a man's life, to another period of the same man's life, is a stock from which, after a certain period, large defalcations are every minute making by the scythe of Time.—x. 69.

REMOTE TIMES, AND REMOTE PLACES.

Remote *times* are virtually present to us in remote *places*. The

different generations of mankind, at their different stages of civilisation, are at once present to our eyes. We may view our ancestors in our antipodes. In Japan, sorcerers are still seen riding in the clouds. In Negroland, witchcraft is even now the most common of all crimes. Half a century is scarce past since Hungary has been cleared of vampires.—vii. 90.

FALSE LAUDATION OF THE DEAD.

De mortuis nil nisi bonum;—With all its absurdity, the adage is but too frequently received as a leading principle of morals. Of two attacks, which is the more barbarous—on a man that does feel it, or on a man that does not? On the man that does feel it, says the principle of utility: on the man that does not, says the principle of caprice and prejudice—the principle of sentimentalism—the principle in which imagination is the sole mover—the principle in and by which, feelings are disregarded as not worth notice.

The same man who bepraises you when dead, would have plagued you without mercy when living.

* * * * * * * * *

The cause of this so extensively-prevalent, and extensively-pernicious propensity lies not very deep.

A dead man has no rivals,—to nobody is he an object of envy: in whosesoever way he may have stood when living, when dead, he no longer stands in anybody's way. If he was a man of genius, those who denied him any merit during his life,—even his very enemies,—changing their tone all at once, assume an air of justice and kindness which costs them nothing, and enables them, under pretence of respect for the dead, to gratify their malignity towards the living.

Another class of persons habitually exalt the past, for the express purpose of depressing and discouraging the present generation.

It is characteristic of the same sort of persons, as well as of the same system of politics, to idolize, under the name of wisdom of our ancestors, the wisdom of untaught, inexperienced generations, and to undervalue and cover, with every expression of contempt that the language of pride can furnish, the supposed ignorance and folly of the great body of the people.*

* A "Burdett mob," for example.

So long as they keep to vague generalities,—so long as the two objects of comparison are each of them taken in the lump—wise ancestors in one lump, ignorant and foolish mob of modern times in the other,—the weakness of the fallacy may escape detection. Let them but assign for the period of superior wisdom any determinate period whatsoever, not only will the groundlessness of the notion be apparent, (class being compared with class in that period and the present one,) but, unless the antecedent period be, comparatively speaking, a very modern one, so wide will be the disparity, and to such an amount in favour of modern times, that, in comparison with the lowest class of the people in modern times, (always supposing them proficients in the art of reading, and their proficiency employed in the reading of newspapers,) the very highest and best informed class of these wise ancestors will turn out to be grossly ignorant.—ii. 399-401.

"THEORETICAL," AS A TERM OF REPROACH.

Every man's knowledge is, in its extent, proportioned to the extent as well as number of those general propositions, of the truth of which, they being true, he has the persuasion in his own mind: in other words, the extent of these his theories comprises the extent of his knowledge.

If, indeed, his theories are false, then, in proportion as they are extensive, he is the more deeply steeped in ignorance and error.

But from the mere circumstances of its being theoretical, by these enemies to knowledge its falsehood is inferred as if it were a necessary consequence, with as much reason as if, from a man's speaking, it were inferred, as a necessary consequence, that what he speaks must be false.

One would think, that in thinking there were something wicked or else unwise: everybody feels, or fancies a necessity of disclaiming it. "I am not given to speculation,"—"I am no friend to theories." Speculation—theory—what is it but thinking? Can a man disclaim speculation—can he disclaim theory, without disclaiming thought? If they do not mean thought, they mean nothing; for, unless it be a little more thought than ordinary, theory, speculation, mean nothing.

To escape from the imputation of meditating destruction to mankind, a man must disclaim everything that puts him above the level of a beast.

A plan proposes a wrong end—or, the end being right, proposes a wrong set of means. If this be what a man means, can he not say so? Would not what he says have somewhat more meaning—be a little more consistent with the principles of common sense, with common honesty, than saying of it that it is theoretical—that it is speculative?—ii. 458-459.

THE WORD "SPECULATIVE."

An epithet in use among official persons, for the condemnation of whatsoever proposition is too adverse to private interest not to be hated, and at the same time too manifestly true to be denied.—vi. 144.

GOOD IN THEORY—BAD IN PRACTICE.

That there have been plans in abundance which have been found bad in practice, and many others, which would, if tried, have proved bad in practice, is altogether out of dispute.

That of each description there have been many which in theory have appeared, and with reference to the judgment of some of the persons by whom they have been considered, have been found *plausible*, is likewise out of dispute.

What is here meant to be denied, is, that a plan, which is essentially incapable of proving good in practice, can with propriety be said to be good in theory.

Whenever, out of a number of circumstances the concurrence of all of which is necessary to the success of a plan, any one is, in the calculation of the effects expected from it, omitted, any such plan will, in proportion to the importance of the omitted circumstance, be defective in practice; and if such be the degree of importance, *bad*—upon the whole, a bad one; the disadvantageous effects of the plan not finding a compensation in the advantageous ones.

When the plan for the illumination of the streets by gas-lights was laid before the public by the person who considered himself, or gave himself out for the inventor, one of the items in the article of expense—one capital article, viz. that of the pipes, was omitted. On the supposition that the pipes might all of them have been had for nothing, and that in the plan so exhibited no other such imperfections were to be found, the plan would, to the persons

engaged in the undertaking, be not merely advantageous, but advantageous in the prodigious degree therein represented. If, on the contrary, the expense of this omitted article were such as to more than countervail the alleged balance on the side of profit, then would the plan, with reference to the undertakers, prove disadvantageous upon the whole, and in one word, a bad one.

But whatever it prove to be in practice, in theory, having so important an omission in it, it cannot but be pronounced a bad one; for every plan in which, in the account of advantages and disadvantages—of profit and losses, any item is on the side of disadvantage or loss omitted, is, in proportion to the magnitude of such loss, a bad one, how advantageous soever upon trial the result may prove upon the whole.

In the line of political economy, most plans that have been adopted and employed by government for enriching the community by money given to individuals, have been bad in practice.

But if they have been bad in practice, it is because they have been bad in theory. In the account taken of profit and loss, some circumstance that has been necessary to render the plan in question advantageous upon the whole, has been omitted.

This circumstance has been the advantage, which from the money employed would have been reaped, either in the way of addition to capital by other means, or in the way of comfort by expenditure.

Of the matter of wealth, portions that by these operations were but *transferred* from hand to hand, and commonly with a loss by the way, were erroneously considered as having been *created*.—ii. 460.

FALSE REASONING DEBILITATES THE MIND.

As in religion, so in jurisprudence, there is no absurdity so gross as not to have found its zealous, and in a certain sense even its disinterested, defenders: for,—howsoever the habit of false reasoning may have had, at its origin, the influence of sinister interest for its efficient cause,—yet, when once in train, it is driven on by the *vis inertiæ* in the beaten track, till at length it acquires an independent existence, having lost all recollection of the impure source that gave it birth.

Thus it is that, in all that train of reasoning which exercises itself over the particular field in question—in all that quarter of

the psychological frame, a sort of local palsy establishes itself: a habit of imbecility, a distempered relish for the convenient absurdity, a nausea for inconvenient truth.

This partial sort of mental palsy is not incompatible with an ordinary, nor even with an extraordinary, degree of strength in the other part of the mental frame. The Herculean mind of Johnson, driven to the confines of insanity by the *veteres aviæ* that had taken possession of his bosom in early youth, laboured under a palsy of this kind, and had lost the faculty of reasoning on certain topics connected with religion, as may be seen in the hints given by his biographers.

Alchymy, judicial astrology, judicature under technical procedure,—under these names may be seen so many systems of profit-seeking imposture: alchymy, the art of cheating men on pretence of making gold; judicial astrology, the art of cheating men on pretence of foretelling future events; judicature (under technical procedure,) the art of cheating men on pretence of administering justice.

That among alchymists and judicial astrologers there have been those who have been dupes to the impostures by which they profited, cannot be doubted. That, among technical lawyers, prejudice, and the concealed workings of self-interest, have been productive of the like illusion, is equally indubitable. Between the company of dupes, and the fellowship of hypocrites, who shall draw the line? No one under omniscience. And to what use would it be drawn? To none whatever. On the physical ground, how often must the dupe and the impostor have been counted in one person,—a dupe at the commencement of his career, an impostor in the progress of it! The same delusions by which he had been himself deceived, would, after the cloud was dissipated, and when the jargon had become sufficiently familiar, serve him for propagating the delusion to other minds.—vii. 210.

THE INFLUENCE OF WORDS.

When, by a consideration of any kind, a man is determined to maintain a proposition of any kind, and finds it not tenable on the ground of reason and experience,—to conceal his distress, he has recourse to some phrase, in and by which the truth of the proposition is, somehow or other, assumed.

Thus, in the moral department of science: having a set of obligations which they were determined to impose upon mankind,

or such part of it at any rate as they should succeed in engaging by any means to submit to the yoke,—phrases, in no small variety and abundance, have been invented by various persons, for the purpose of giving force to their respective wills, and thus performing for their accommodation the functions of a law :—law of nations, moral sense, common sense, understanding, rule of right, fitness of things, law of reason, right reason, natural justice, natural equity, good order, truth, will of God, repugnancy to nature.—vi. 240.

UNCONSCIOUS ADOPTION OF FALLACIES.

The more frequent the trumpeter of any fallacy is in its performance, the greater the progress which his mind is apt to make from the state of evil-consciousness to the state of sincerity—from the state of improbity to the state of imbecility ; that is, imbecility with respect to the subject-matter. It is said of gamblers, that they begin their career as dupes, and end as thieves : in the present case, the parties begin with craft, and end with delusion.

A phenomenon, the existence of which seems to be out of dispute, is that of a liar, by whom a lie of his own invention has so often been told as true, that at length it has come to be accepted as such even by himself.

But if such is the case with regard to a statement composed of words, every one of which finds itself in manifest contradiction to some determinate truth, it may be imagined how much more easily, and consequently how much more frequently, it may come to be the case, in regard to a statement of such nicety and delicacy, as that of the strength of the impression made by this or that instrument of persuasion, of which the persuasive force is susceptible of innumerable degrees, no one of which has ever yet been distinguished from any other, by any externally sensible signs or tokens, in the form of discourse or otherwise.—ii. 485.

FREE INQUIRY INTO EXISTING INSTITUTIONS.

If, on the one hand, a hasty and indiscriminating condemner of what is established, may expose himself to contempt ; on the other hand, a bigoted or corrupt defender of the works of power becomes guilty, in a manner, of the abuses which he supports : the more so if, by oblique glances and sophistical glosses, he

studies to guard from reproach, or recommend to favour, what he knows not how, and dares not attempt, to justify. To a man who contents himself with simply stating an institution as he thinks it *is*, no share, it is plain, can justly be attributed (nor would any one think of attributing to him any share) of whatever reproach, any more than of whatever applause the institution may be thought to merit. But if not content with this humbler function, he takes upon him to give *reasons* in behalf of it, reasons whether *made* or found by him, it is far otherwise. Every false and sophistical reason that he contributes to circulate, he himself is chargeable with: nor ought he to be holden guiltless even of such as, in a work where *fact*, not *reason*, is the question, he delivers as from other writers without censure. By officiously adopting them, he makes them his own, though delivered under the names of the respective authors: not much less than if delivered under his own. For the very idea of a *reason* betokens approbation: so that to deliver a remark under that character, and that without censure, is to adopt it. A man will scarcely, therefore, without some note of disapprobation, be the instrument of introducing, in the guise of a reason, an argument which he does not really wish to see approved. Some method or other he will take to wash his hands of it: some method or other he will take to let men see that what he means to be understood to do, is merely to report the judgment of another, not to pass one of his own. Upon that other, then, he will lay the blame: at least he will take care to repel it from himself. If he omits to do this, the most favourable cause that can be assigned to the omission is indifference—indifference to the public welfare—that indifference which is itself a crime.

It is wonderful how forward some have been to look upon it as a kind of presumption, and ingratitude, and rebellion, and cruelty, and I know not what besides, not to allege only, nor to own, but to suffer any one so much as to imagine, that an old-established law could in any respect be a fit object of condemnation. Whether it has been a kind of *personification* that has been the cause of this, as if the Law were a living creature, or whether it has been the mechanical veneration for antiquity, or what other delusion of the fancy, I shall not here inquire. For my part, I know not for what good reason it is that the merit of justifying a law when right, should have been thought greater than that of censuring it when wrong. Under a government of laws, what is the motto of a good citizen? *To obey punctually; to censure freely.*

Thus much is certain; that a system that is never to be censured, will never be improved: that if nothing is ever to be found fault with, nothing will ever be mended: and that a resolution to justify everything at any rate, and to disapprove of nothing, is a resolution which, pursued in future, must stand as an effectual bar to all the *additional* happiness we can ever hope for; pursued hitherto, would have robbed us of that share of happiness which we enjoy already.

Nor is a disposition to find "everything as it should be," less at variance with itself, than with reason and utility. The common-place arguments in which it vents itself justify not what is established, in effect, any more than they condemn it; since whatever *now* is establishment, *once* was innovation.

Precipitate censure, cast on a political institution, does but recoil on the head of him who casts it. From such an attack it is not the institution itself, if well-grounded, that can suffer. What a man says against it, either makes impression or makes none. If none, it is just as if nothing had been said about the matter; if it *does* make an impression, it naturally calls up some one or other in defence. For if the institution is in truth a beneficial one to the community in general, it cannot but have given an interest in its preservation to a number of individuals. By their industry, then, the reasons on which it is grounded are brought to light; from the observation of which, those who acquiesced in it before upon trust, now embrace it upon conviction. Censure, therefore, though ill-founded, has no other effect upon an institution than to bring it to that test, by which the value of those, indeed, on which prejudice alone has stamped a currency, is cried down, but by which the credit of those of sterling utility is confirmed.

Nor is it by any means from passion and ill-humour, that censure, passed upon legal institutions, is apt to take its birth. When it is from passion and ill-humour that men speak, it is with *men* that they are in ill-humour, not with laws; it is men, not laws, that are the butt of "arrogance." Spleen and turbulence may indeed prompt men to quarrel with living individuals; but when they make complaint of the dead letter of the Law, the work of departed lawgivers, against whom no personal antipathy can have subsisted, it is always from the observation, or from the belief at least, of some real grievance. The Law is no man's enemy; the Law is no man's rival. Ask the clamorous and unruly multitude—it is never the Law itself that is in the wrong; it is always some wicked interpreter of the Law that has corrupted and abused it.

Thus destitute of foundation are the terrors, or pretended terrors, of those who shudder at the idea of a free censure of established institutions: so little does the peace of society require the aid of those lessons which teach men to accept of anything as a reason, and to yield the same abject and indiscriminating homage to the Laws here, which is paid to the despot elsewhere. The fruits of such tuition are visible enough in the character of that race of men who have always occupied too large a space in the circle of the profession; a passive and enervate race, ready to swallow anything, and to acquiesce in anything; with intellects incapable of distinguishing right from wrong, and with affections alike indifferent to either; insensible, short-sighted, obstinate; lethargic, yet liable to be driven into convulsions by false terrors; deaf to the voice of reason and public utility; obsequious only to the whisper of interest, and to the beck of power.—i. 229-231.

WHAT ABUSE WILL NOT FIND SUPPORTERS?

In Mexico, a rule was established, giving power to a certain person or set of persons in authority, on condition of pronouncing some word or other, translated by us into the word *sacrifice*, to murder any and as many persons as he pleased. In some newly-discovered islands of the South Sea, the like rule has place, and is acted upon to this day.

In this country, this rule is looked upon as an improper one: nor, supposing a motion made for the establishment of any such rule, would so much as a single voice (it is supposed) be found to second it. Why? Answer: For three very good reasons:—1. Because it is established in a foreign country; 2. Because, in that foreign country, the manners and opinions are in a savage state; 3. Because it is not established in our own.

But, supposing this said rule actually established, and still in force, and a motion now made tending to the abolition of it,—would such a motion pass *nemine contradicente?* So far from it, that, if at all, it would not pass but at the end of a considerable number of years: during which, every session, would have been emptied upon it the whole quiver full of those fallacies which, having for their common property that of being irrelevant with relation to every proposition which they are employed to combat, would apply with equal force and propriety to a proposition for divesting a king of the prerogative of murdering an unlimited number of his subjects at his pleasure, and to a proposition for

divesting a king's nominees, under the name of judges, of the privilege of destroying every year, by a slow death, an unlimited number of those same subjects; having first brought them to ruin, under and by virtue of a violation of that primary principle of justice, which prescribes as the first step proper to be taken by a judge, the giving to the parties on both sides (with or without their respective agents) a real hearing in his presence.—vii. 233-234.

THEORY OF THE SOCIAL COMPACT.

That compacts, by whomsoever entered into, *ought* to be kept; —that men are *bound* by compacts, are propositions which men, without knowing or inquiring why, were disposed universally to accede to. The observance of promises they had been accustomed to see pretty constantly enforced. They had been accustomed to see Kings, as well as others, behave themselves as if bound by them. This proposition, then, "that men are bound by *compacts;*" and this other, "that, if one party performs not his part, the other is released from his," being propositions which no man disputed, were propositions which no man had any call to prove. In theory they were assumed for axioms: and in practice they were observed as rules. If, on any occasion, it was thought proper to make a show of proving them, it was rather for form's sake, than for anything else; and that rather in the way of memento or instruction to acquiescing auditors, than in the way of proof against opponents. On such an occasion, the common-place retinue of phrases was at hand: *Justice*, *Right Reason*, required it; the *Law* of *Nature* commanded it, and so forth: all which are but so many ways of intimating that a man is firmly persuaded of the truth of this or that moral proposition, though he either thinks he *need not*, or finds he *can't*, tell *why*. Men were too obviously and too generally interested in the observance of these rules, to entertain doubts concerning the force of any arguments they saw employed in their support. It is an old observation, how Interest smooths the road to Faith.

A compact, then, it was said, was made by the King and People: the terms of it were to this effect:—The People, on their part, promised to the King a *general obedience:* the King, on his part, promised to *govern* the People in such a *particular* manner always, as should be *subservient* to their happiness. I insist not on the words: I undertake only for the sense; as far as an ima-

ginary engagement, so loosely and so variously worded by those who have imagined it, is capable of any decided signification. Assuming, then, as a general rule, that promises, when made, ought to be observed ; and, as a point of fact, that a promise to this effect in particular had been made by the party in question, men were more ready to deem themselves qualified to judge when it was such a promise was *broken*, than to decide directly and avowedly on the delicate question, when it was that a King acted so far in *opposition* to the happiness of his People, that it were better no longer to obey him.

It is manifest, on a very little consideration, that nothing was gained by this manœuvre after all : no difficulty removed by it. It was still necessary, and that as much as ever, that the question men studied to avoid should be determined, in order to determine the question they thought to substitute in its room. It was still necessary to determine, whether the King in question had, or had not, acted so far in *opposition* to the happiness of his people, that it were better no longer to obey him ; in order to determine, whether the promise he was supposed to have made, had, or had not, been broken. For what was the supposed purport of this promise ? It was no other than what has just been mentioned.

Let it be said, that part at least of this promise was to govern in *subservience to Law :* that hereby a more precise rule was laid down for his conduct, by means of this supposal of a promise, than that other loose and general rule to govern in subservience to the *happiness of his people :* and that, by this means, it is the letter of the *Law* that forms the tenor of the rule.

Now true it is, that the governing in opposition to Law, is *one* way of governing in opposition to the happiness of the people : the natural effect of such a contempt of the Law being, if not actually to destroy, at least to threaten with destruction, all those rights and privileges that are founded on it : rights and privileges on the enjoyment of which that happiness depends. But still it is not this that can be safely taken for the entire purport of the promise here in question : and that for several reasons. *First,* Because the most mischievous, and under certain constitutions the most feasible, method of governing in opposition to the happiness of the people, is, by setting the Law itself in opposition to their happiness. *Second,* Because it is a case very conceivable, that a King may, to a great degree, impair the happiness of his people without violating the letter of any single Law. *Third,* Because extraordinary occasions may now and then occur, in which the happiness of the people may be better promoted by

acting, for the moment, in *opposition* to the Law, than in *subservience* to it. *Fourth*, Because it is not any single violation of the Law, as such, that can properly be taken for a breach of his part of the contract, so as to be understood to have released the people from the obligation of performing theirs. For, to quit the fiction, and resume the language of plain truth, it is scarce ever any single violation of the Law that, by being *submitted to*, can produce so much mischief as shall surpass the probable mischief of *resisting* it. If every single instance whatever of such a violation were to be deemed an entire dissolution of the contract, a man who reflects at all would scarce find anywhere, I believe, under the sun, that Government which he could allow to subsist for twenty years together. It is plain, therefore, that to pass any sound decision upon the question which the inventors of this fiction substituted instead of the true one, the latter was still necessary to be decided. All they gained by their contrivance was, the convenience of deciding it obliquely, as it were, and by a side wind; that is, in a crude and hasty way, without any direct and steady examination.

But, after all, for what *reason* is it, that men *ought* to keep their promises? The moment any intelligible reason is given, it is this: that it is for the *advantage* of society they should keep them; and if they do not, that as far as *punishment* will go, they should be *made* to keep them. It is for the advantage of the whole number that the promises of each individual should be kept: and, rather than they should not be kept, that such individuals as fail to keep them should be punished. If it be asked, how this appears? the answer is at hand:—Such is the benefit to gain, and mischief to avoid, by keeping them, as much more than compensates the mischief of so much punishment as is requisite to oblige men to it. Whether the dependence of *benefit* and *mischief* (that is, of *pleasure* and *pain*) upon men's conduct in this behalf, be as here stated, is a question of *fact*, to be decided, in the same manner that all other questions of fact are to be decided, by testimony, observation, and experience.*

* The importance which the observance of promises is of to the happiness of society, is placed in a very striking and satisfactory point of view, in a little apologue of MONTESQUIEU, entitled, *The History of the Troglodytes*. The Troglodytes are a people who pay no regard to promises. By the natural consequences of this disposition, they fall from one scene of misery into another; and are at last exterminated. The same Philosopher in his *Spirit of Laws*, copying and refining upon the current jargon, feigns a law for this and other purposes, after defining a Law to be a *relation*. How much more instructive on this head is the fable of the Troglodytes, than the pseudo-metaphysical sophistry of the *Esprit des Loix!*

This, then, and no other, being the *reason* why men should be made to keep their promises, viz. that it is for the advantage of society that they should, is a reason that may as well be given at once why *Kings*, on the one hand, in governing, should in general keep within established Laws, and (to speak universally) abstain from all such measures as tend to the unhappiness of their subjects: and, on the other hand, why *subjects* should obey Kings as long as they so conduct themselves, and no longer; why they should obey, in short, *so long as the probable mischiefs of obedience are less than the probable mischiefs of resistance:* why, in a word, taking the whole body together, it is their *duty* to obey just so long as it is their *interest*, and no longer. This being the case, what need of saying of the one, that *he* PROMISED so to *govern;* of the other, that they PROMISED so to *obey*, when the fact is otherwise?

True it is that, in this country, according to ancient forms, some sort of vague promise of *good government* is made by kings at the ceremony of their coronation: and let the acclamations, perhaps given, perhaps not given, by chance persons out of the surrounding multitude, be construed into a promise of *obedience* on the part of the *whole* multitude: that whole multitude itself a small drop collected together by chance out of the ocean of the state: and let the two promises thus made be deemed to have formed a perfect *compact:*—not that either of them is declared to be the *consideration* of the other.

Make the most of this concession: one experiment there is, by which every reflecting man may satisfy himself, I think beyond a doubt that it is the consideration of *utility*, and no other, that, secretly, perhaps, but unavoidably, has governed his judgment upon all these matters. The experiment is easy and decisive. It is but to reverse, in supposition, in the first place, the import of the *particular* promise thus feigned; in the next place, the effect in point of *utility* of the observance of promises *in general*. Suppose the king to promise that he would govern his subjects *not* according to Law; *not* in the view to promote their happiness:—would this be binding upon *him?* Suppose the people to promise they would obey him *at all events*, let him govern as he will; let him govern to their destruction:—would this be binding upon *them?* Suppose the constant and universal effect of an observance of promises were to produce *mischief*, would it *then* be men's *duty* to observe them? would it *then* be *right* to make Laws, and apply punishment to *oblige* men to observe them?

"No," (it may perhaps be replied;) "but for this reason:

among promises, some there are that, as every one allows, are void: now these you have been supposing, are unquestionably of the number. A promise that is in itself *void*, cannot, it is true, create any obligation: But allow the promise to be *valid*, and it is the promise itself that creates the obligation, and nothing else." The fallacy of this argument it is easy to perceive. For what is it, then, that the promise depends on for its *validity?* what is it that being *present* makes it *valid?* what is it that being *wanting* makes it *void?* To acknowledge that any *one* promise may be void, is to acknowledge that if any *other* is *binding*, it is not merely because it is a promise. That circumstance, then, whatever it be, on which the validity of a promise depends; that circumstance, I say, and not the promise itself, must, it is plain, be the cause of the obligation which a promise is apt in general to carry with it.

But farther. Allow, for argument's sake, what we have disproved: allow that the obligation of a promise is independent of every other: allow that a promise is binding *propriâ vi:* Binding, then, on whom? On him certainly who makes it. Admit this: For what reason is the same individual promise to be binding on those who *never* made it? The king, *fifty years ago*, promised my *great-grandfather* to govern him according to law: my great-grandfather, *fifty years ago*, promised the king to obey him according to law. The king, *just now*, promised my *neighbour* to govern him according to law: my neighbour, *just now*, promised the king to obey him according to law. Be it so: What are these promises, all or any of them, to *me?* To make answer to this question, some other principle, it is manifest, must be resorted to, than that of the *intrinsic* obligation of promises upon those who make them.

Now this *other* principle that still recurs upon us, what other can it be than the *principle of* UTILITY? The principle which furnishes us with that *reason*, which alone depends not upon any higher reason, but which is itself the sole and all-sufficient reason for every point of practice whatsoever.—i. 269-272.

IRREVOCABLE LAWS.

At each point of time, the sovereign for the time possesses such means as the nature of the case affords, for making himself acquainted with the exigencies of his own time.

With relation to the future, the sovereign has no such means

of information ; it is only by a sort of vague anticipation—a sort of rough and almost random guess drawn by analogy, that the sovereign of this year can pretend to say what will be the exigencies of the country this time ten years.

Here, then, to the extent of the pretended immutable law, is the government transferred from those who possess the best possible means of information, to those who, by their very position, are necessarily incapacitated from knowing anything at all about the matter.

Instead of being guided by their own judgment, the men of the nineteenth century shut their own eyes, and give themselves up to be led blindfold by the men of the eighteenth century.

The men who have the means of knowing the whole body of the facts, on which the correctness and expediency of the judgment to be formed must turn, give up their own judgment to that of a set of men entirely destitute of any of the requisite knowledge of such facts.

Men who have a century more of experience to ground their judgments on, surrender their intellect to men who had a century less experience, and who, unless that deficiency constitutes a claim, have no claim to preference.

If the prior generation were, in respect of intellectual qualification, ever so much superior to the subsequent generation,—if it understood so much better than the subsequent generation itself, the interest of that subsequent generation,—could it have been in an equal degree anxious to promote that interest, and consequently equally attentive to those facts with which, though in order to form a judgment it ought to have been, it is impossible that it should have been acquainted? In a word, will its love for that subsequent generation be quite so great as that same generation's love for itself?

Not even here, after a moment's deliberate reflection, will the assertion be in the affirmative.

And yet it is their prodigious anxiety for the welfare of their posterity that produces the propensity of these sages to tie up the hands of the same posterity for evermore, to act as guardians to its perpetual and incurable weakness, and take its conduct for ever out of its own hands.

If it be right that the conduct of the nineteenth century should be determined not by its own judgment but by that of the eighteenth, it will be equally right that the conduct of the twentieth century should be determined not by its own judgment but by that of the nineteenth.

The same principle still pursued, what at length would be the consequence? That in process of time, the practice of legislation would be at an end: the conduct and fate of all men would be determined by those who neither knew nor cared anything about the matter; and the aggregate body of the living would remain for ever in subjection to an inexorable tyranny, exercised, as it were, by the aggregate body of the dead.

This irrevocable law, whether good or bad at the moment of its enactment, is found at some succeeding period to be productive of mischief—uncompensated mischief—to any amount. Now, of this mischief, what possibility has the country of being rid?

A despotism, though it were that of a Caligula or a Nero, might be to any degree less mischievous, less intolerable, than any such immutable law. By benevolence, (for even a tyrant may have his moments of benevolence,) by benevolence, by prudence—in a word, by caprice—the living tyrant might be induced to revoke his law, and release the country from its consequences. But the dead tyrant? who shall make *him* feel? who shall make *him* hear?

Let it not be forgotten, that it is only to a bad purpose that this and every other instrument of deception will in general be employed.

It is only when the law in question is mischievous, and generally felt and understood to be such, that an argument of this stamp will be employed in the support of it.

Suppose the law a good one, it will be supported, not by absurdity and deception, but by reasons drawn from its own excellence.—ii. 402-403.

A declaration or assertion that this or that law is immutable, so far from being a proper instrument to ensure its permanency, is rather a presumption that such law has some mischievous tendency.

The better the law, the less is any such extraneous argument likely to be recurred to for the support of it; the worse the law, and thence the more completely destitute of all intrinsic support, the more likely is it that support should be sought for it from this extraneous source.—ii. 407.

CAN THE POWER OF THE LEGISLATURE BE LIMITED?

The legislature *can*not do it? The legislature *can*not make a law to this effect? Why cannot? What is there that should

hinder them? Why not *this*, as well as so many other laws murmured at, perhaps as inexpedient, yet submitted to without any question of the *right?* With men of the same party, with men whose affections are already listed against the law in question, anything will go down: any rubbish is good that will add fuel to the flame. But with regard to an impartial by-stander, it is plain that it is not denying the right of the legislature, their *authority*, their *power*, or whatever be the word—it is not denying that they *can* do what is in question—it is not that, I say, or any discourse verging that way, that can tend to give *him* the smallest satisfaction.

Grant even the proposition in general:—What are we the nearer? Grant that there *are* certain bounds to the *authority* of the legislature:—Of what use is it to say so, when these bounds are what nobody has ever attempted to mark out to any useful purpose; that is, in any such manner whereby it might be known beforehand what description a law must be of to fall *within*, and what to fall *beyond* them? Grant that there *are* things which the legislator *can*not do;—grant that there *are* laws which exceed the *power* of the legislature to establish: what rule does this sort of discourse furnish us for determining whether any one that is in question is, or is not, of the number? As far as I can discover, none. Either the discourse goes on in the confusion it began;—either all rests in vague assertions, and no intelligible argument at all is offered; or if any, such arguments as are drawn from the principle of *utility:* arguments which, in whatever variety of words expressed, come at last to neither more nor less than this: that the tendency of the law is, to a greater or a less degree, pernicious. If this then be the result of the argument, why not come home to it at once? Why turn aside into a wilderness of sophistry, when the path of plain reason is straight before us?

What practical inferences those who maintain this language mean should be deduced from it, is not altogether clear; nor, perhaps, does every one mean the same. Some who speak of a law as being *void* (for to this expression, not to travel through the whole list, I shall confine myself) would persuade us to look upon the authors of it as having thereby *forfeited*, as the phrase is, their *whole* power: as well that of giving force to the particular law in question, as to any other. These are they who, had they arrived at the same practical conclusion through the principle of utility, would have spoken of the law as being to such a degree pernicious, as that, were the bulk of the community to see it in its true light, *the probable mischief of resisting it would be less than the probable*

mischief of submitting to it. These point, in the first instance, at *hostile* opposition.

Those who say nothing about forfeiture are commonly less violent in their views. These are they who, were they to ground themselves on the principle of utility, and to use our language, would have spoken of the law as being mischievous indeed, but without speaking of it as being mischievous to the degree that has been just mentioned. The mode of opposition which they point to is one which passes under the appellation of a *legal* one.

Admit, then, the law to be void in their sense, and mark the consequences. The idea annexed to the epithet *void* is obtained from those instances in which we see it applied to a private instrument. The consequence of a *private* instrument's being void is, that all persons concerned are to act as if no such instrument had existed. The consequence, accordingly, of a *law's* being void must be, that people shall act as if there were no such law about the matter: and therefore, that if any person, in virtue of the mandate of the law, should do anything in coercion of another person, which without such law he would be punishable for doing, he would still be punishable; to wit, by appointment of the judicial power. Let the law, for instance, be a law imposing a tax: a man who should go about to levy the tax by force would be punishable as a trespasser: should he chance to be killed in the attempt, the person killing him would *not* be punishable as for murder: should he kill, he himself *would*, perhaps, be punishable as for murder. To whose office does it appertain to do those acts in virtue of which such punishment would be inflicted? To that of the Judges. Applied to practice, then, the effect of this language is, by an appeal made to the Judges, to confer on those magistrates a controlling power over the acts of the legislature.

By this management, a *particular* purpose might, perhaps, by chance be answered: and let this be supposed a good one. Still what benefit would, from the *general* tendency of such a doctrine, and such a practice in conformity to it, accrue to the body of the people, is more than I can conceive. A Parliament, let it be supposed, is too much under the influence of the Crown; pays too little regard to the sentiments and the interests of the people. Be it so. The people, at any rate, if not so great a share as they might and ought to have, have had, at least, *some* share in choosing it. Give to the Judges a power of annulling its acts; and you transfer a portion of the supreme power from an assembly which the people have had *some* share, at least, in choosing, to a set of men

in the choice of whom they have not the least imaginable share: to a set of men appointed solely by the Crown: appointed *solely*, and avowedly, and *constantly*, by that very magistrate whose partial and occasional influence is the very grievance you seek to remedy.

In the heat of debate, some, perhaps, would be for saying of this management, that it was transferring at once the supreme authority from the legislative power to the judicial. But this would be going too far on the other side. There is a wide difference between a *positive* and a *negative* part in legislation. There is a wide difference, again, between a negative upon *reasons* given, and a negative without any. The power of *repealing* a law, even for reasons given, is a great power: too great, indeed, for Judges; but still very distinguishable from, and much inferior to, that of *making* one.

To return for a moment to the language used by those who speak of the supreme power as being limited in its own nature. One thing I would wish to have remembered. What is here said of the impropriety, and evil influence of that kind of discourse, is not intended to convey the smallest censure on those who use it, as if intentionally accessary to the ill effects it has a tendency to produce. It is rather a misfortune in the language, than a fault of any person in particular. The original of it is lost in the darkness of antiquity. We inherited it from our fathers, and maugre all its inconveniences, are likely, I doubt, to transmit it to our children.

I cannot look upon this as a mere dispute of words: I cannot help persuading myself, that the disputes between contending parties—between the defenders of a law and the opposers of it, would stand a much better chance of being adjusted than at present, were they but explicitly and constantly referred at once to the principle of UTILITY. The footing on which this principle rests every dispute, is that of matter of fact; that is, future fact—the probability of certain future contingencies. Were the debate, then, conducted under the auspices of this principle, one of two things would happen: either men would come to an agreement concerning that probability, or they would see at length, after due discussion of the real grounds of the dispute, that no agreement was to be hoped for. They would, at any rate, see clearly and explicitly the point on which the *dis*agreement turned. The discontented party would then take their resolution to resist or to submit, upon just grounds, according as it should appear to them worth their while—according to what should appear to them the

importance of the matter in dispute—according to what should appear to them the probability or improbability of success—*according*, in short, *as the mischiefs of submission should appear to bear a less, or a greater ratio to the mischiefs of resistance.* But the door to reconcilement would be much more open, when they saw that it might be, not a mere affair of passion, but a difference of judgment, and that, for anything they could know to the contrary, a sincere one, that was the ground of quarrel.

All else is but womanish scolding and childish altercation, which is sure to irritate, and which never can persuade. *I* say, the legislature "can*not* do this—*I* say, that it *can*. *I* say, that to do this, *exceeds* the bounds of its *authority*—*I* say, it does *not*." It is evident, that a pair of disputants setting out in this manner, may go on irritating and perplexing one another for everlasting, without the smallest chance of ever coming to an agreement. It is no more than announcing, and that in an obscure and at the same time a peremptory and captious manner, their opposite persuasions, or rather affections, on a question of which neither of them sets himself to discuss the grounds. The question of utility, all this while, most probably is never so much as at all brought upon the carpet: if it be, the language in which it is discussed is sure to be warped and clouded to make it match with the obscure and entangled pattern we have seen.

On the other hand, had the debate been originally and avowedly instituted on the footing of utility, the parties might at length have come to an agreement; or at least to a visible and explicit issue.—"*I* say that the mischiefs of the measure in question are to *such* an amount—*I* say, *not* so, but to a *less*.—*I* say, the benefits of it are only to *such* an amount—*I* say, *not* so, but to a *greater*." —This, we see, is a ground of controversy very different from the former. The question is now manifestly a question of conjecture concerning so many future contingent matters of fact: to solve it, both parties then are naturally directed to support their respective persuasions by the only evidence the nature of the case admits of;—the evidence of such *past* matters of fact as appear to be analogous to those contingent *future* ones. Now these *past* facts are almost always numerous: so numerous, that till brought into view for the purpose of the debate, a great proportion of them are what may very fairly have escaped the observation of one of the parties: and it is owing, perhaps, to this and nothing else, that that party is of the persuasion which sets it at variance with the other. Here, then, we have a plain and open road, perhaps, to present reconcilement: at the worst, to an intelligible and

explicit issue—that is, to such a ground of difference as may, when thoroughly trodden and explored, be found to lead on to reconcilement at the last. Men, let them but once clearly understand one another, will not be long ere they agree. It is the perplexity of ambiguous and sophistical discourse that, while it distracts and eludes the apprehension, stimulates and inflames the passions.—i. 288-292.

THE PRACTICE OF CALLING BAD LAWS "ILLEGAL."

So completely is the idea of right confounded with the idea of judges' will in the mind of an English lawyer—so completely is the difference between right and wrong understood by him to be dependent upon that will, that when a practice, howsoever established, happens by whatsoever cause to have been brought under his displeasure,—no notion can he form to himself of any other mode of combating it, than by insisting that it is illegal:—in other words, that it is not established.

Humanity is a virtue which in England, for at least several generations past, has in no class of men been altogether wanting —not even among lawyers.

Among lawyers, accordingly, and in more instances than one, there have been found those, who under the impulse of this motive have raised their voices against this abuse.* They have argued against it;—they have complained of it;—they have filled volumes with their complaints. They have argued against it,—but how? By showing the mischievousness, the impolicy of it? Something more or less to this effect:—but so long as the legality of it remained unquestioned, they felt what they could not but feel, how unimpressive would be all arguments drawn from such contemned and neglected sources. Yes, it was illegal. Imprisonment for debt illegal? Then what else is there that is legal? If in this case, practice of justice—practice persisted in century after century, does not make law, in what other instance does it make law? If by its mischievousness the practice of English judges be rendered illegal, in what quarter of the whole field of law will any legal practice be to be found?

Illegal? No: the great grievance is—not that it is illegal, but

* The system of imprisonment for debt in England anterior to Lord Campbell's Act.—*Ed.*

that it is legal :—not that at the hands of the authors of the mischief a remedy may be hoped for, but that it is hopeless.—vi. 189.

DREAD OF INNOVATION.

Take, for instance, the word *innovation*. On whatsoever occasion they are for the first time respectively carried into effect or proposed, the best measures and the worst have this in common, that they are *new*. So long as any law or established practice in government exists, to which the appellation of *an abuse* can with propriety be applied, the removal of such abuse—in one word *reform*, viz. in relation to such abuse—must ever be among the measures to which, if to any, the epithet of *good* belongs with indisputable propriety—with a degree of propriety still more out of the reach of dispute than that of any measure, the object of which confines itself to *melioration or improvement*—to the introducing in any shape a new and positive good, of the number of those without the aid of which the business of society has hitherto been conducted.

Under its own name, consistently with the established forms of decency, nor consequently with any satisfactory expectation of success, *abuse* cannot in any shape, be by any person defended ; as little can *reform*, at least in so far as it is understood to go no further than the removal of acknowledged abuse, be opposed. But *innovation*—whatsoever may have been the import attached to the word,—not only *may* find, but continually does find, opponents :—numerous and most strenuous opponents. *Innovation* is a term applicable to anything whatsoever that is new : by it is denoted the introduction of anything that is new : and, as everything whatsoever, and therefore amongst other things, *reform*, in whatever shape, and to whatever subject and in whatever shape applied, is on its first being brought on the carpet *new;* therefore, so it is that whoever can succeed in getting condemnation passed on *innovation*, succeeds thereby in getting condemnation passed on reform : condemnation for everlasting, on reform to whatsoever *abuse* applied : in getting—if not perpetuation—actual perpetuation—at any rate judgment of perpetuation, passed in favour of abuse, in whatsoever shape it may then be, *or may thereafter come to be*, in existence.—v. 207.

GRADUAL REFORM—"ONE THING AT A TIME."

This is neither more nor less than a contrivance for making out of a mere word an excuse for leaving undone an indefinite multitude of things, which the arguer is convinced, and cannot forbear acknowledging, ought to be done.

Suppose half-a-dozen abuses, which equally and with equal promptitude stand in need of reform—this fallacy requires, that without any reason that can be assigned, other than what is contained in the pronouncing or writing of the word *gradual*, all but one or two of them shall remain untouched.

Or, what is better, suppose that, to the effectual correction of some one of these abuses, six operations require to be performed—six operations, all of which must be done ere the correction can be effected—to save the reform from the reproach of being violent and intemperate, to secure to it the praise of graduality, moderation, and temperance, you insist, that of these half-a-dozen necessary operations, some one or some two only shall be talked of, and proposed to be done;—one, by one bill to be introduced this session, if it be not too late (which you contrive it shall be;) another the next session; which time being come, nothing more is to be said about the matter—and there it ends.

For this abandonment, no one reason that will bear looking at can be numbered up, in the instance of any one of the five measures endeavoured to be laid upon the shelf; for if it could, that would be the reason assigned for the relinquishment, and not this unmeaning assemblage of three syllables.

A suit which, to do full justice to it, requires but six weeks, or six days, or six minutes in one day—has it been made to last six years? That your caution and your wisdom may not be questioned, by a first experiment reduce the time to five years; then if that succeeds, in another parliament, should another parliament be in humour, (which it is hoped it will not,) reduce it to four years; then again to three years; and if it should be the lot of your grandchildren to see it reduced to two years, they may think themselves well off, and admire your prudence.

Justice—to which in every eye but that of the plunderer and oppressor, rich and poor have an equal right—do nine-tenths of the people stand excluded from all hope of, by the load of expense that has been heaped up. You propose to reduce this expense. The extent of the evil is admitted, and the nature of the remedy

cannot admit of doubt ; but by the magic of the three syllables *gra-du-al*, you will limit the remedy to the reduction of about one-tenth of the expense. Some time afterwards you may reduce another tenth, and go on so, that in about two centuries, justice may, perhaps, become generally accessible.

Importance of the business—extreme difficulty of the business—danger of innovation—need of caution and circumspection—impossibility of foreseeing all consequences—danger of precipitation—everything should be gradual—one thing at a time—this is not the time—great occupation at present—wait for more leisure—people well satisfied—no petitions presented—no complaints heard—no such mischief has yet taken place—stay till it has taken place :—such is the prattle which the magpie in office, who, understanding nothing, understands that he must have something to say on every subject, shouts out among his auditors as a succedaneum to thought.

Transfer the scene to domestic life, and suppose a man who, his fortune not enabling him without running into debt to keep one race-horse, has been for some time in the habit of keeping six : to transfer to this private theatre the wisdom and the benefit of the gradual system, what you would have to recommend to your friend would be something of this sort :—Spend the first year in considering which of your six horses to give up ; the next year, if you can satisfy yourself which it shall be, give up some one of them : by this sacrifice, the sincerity of your intention and your reputation for economy will be established ; which done, you need think no more about the matter.—ii. 433.

RIGHTS OF THE PUBLIC THE RIGHTS OF INDIVIDUALS.

True it is, that take any man for example, it may with propriety be said, that the public has a right to his services, has a right to command his services, for that the interest of any one man ought to give way to the interest of all. But if this be true as to any one man who happens to be first taken, equally true is it of any other, and so in succession of every man. On the one hand, then, each man is under an obligation to submit to any burthen that shall be proposed ; on the other hand, each man has an equal right to see the burthen imposed, not upon himself, but upon some other. If either of these propositions be taken in their full extent, as much may be said in favour of the one of them as of the other. In this case, if there were no middle course

to take, things must rest in *statu quo*, the scale of utility must remain in equilibrio, one man's interest weighing neither more nor less than another's; the burthen would be borne by nobody, and the immunity of each would be the destruction of all. But there is a middle course to take, which is to divide the burthen, and lay it in equal proportion upon every man.—ii. 207.

FALLACY OF DISTRUST, OR, "WHAT'S AT THE BOTTOM?"

Exposition.—This argument may be considered as a particular modification of the *No-Innovation* argument. An arrangement or set of arrangements has been proposed, so plainly beneficial, and at the same time so manifestly innoxious, that no prospect presents itself of bringing to bear upon them with any effect the cry of No innovation. Is the anti-innovationist mute? No; he has this resource:—In what you see as yet (says he) there may perhaps be no great mischief; but depend upon it, in the quarter from whence these proposed innoxious arrangements come, there are *more behind* that are of a very different complexion; if these innoxious ones are suffered to be carried, others of a noxious character will succeed without end, and will be carried likewise.

Exposure.—The absurdity of this argument is too glaring to be susceptible of any considerable illustration from anything that can be said of it:—

1. In the first place, it begins with a virtual admission of the propriety of the measure considered in itself; and thus containing within itself a demonstration of its own futility, it cuts up from under it the very ground which it is endeavouring to make: yet, from its very weakness, it is apt to derive for the moment a certain degree of force. By the monstrosity of its weakness, a feeling of surprise, and thereupon of perplexity, is apt to be produced: and so long as this feeling continues, a difficulty of finding an appropriate answer continues with it. For that which is itself nothing, what answer (says a man) can I find?

If two measures—G and B—were both brought forward at the same time, G being good and B bad;—rejecting G, because B is bad, would be quite absurd enough; and at first view a man might be apt to suppose that the force of absurdity could go no further.

But the present fallacy does in effect go much farther:—two measures, both of them brought upon the carpet together, both of them unobjectionable, are to be rejected, not for anything that is

amiss in either of them, but for something that by possibility may be found amiss in some other or others that nobody knows of, and the future existence of which, without the slightest ground, is to be assumed and taken for granted.

In the field of policy as applied to measures, this vicarious reprobation forms a counterpart to vicarious punishment in the field of justice as applied to persons.

The measure G, which is good, is to be thrown out, because, for ought we can be sure of, some day or other it may happen to be followed by some other measure B, which may be a bad one. A man A, against whom there is neither evidence nor charge, is to be punished, because, for aught we can be sure of, some time or other there may be some other man who will have been guilty.

If on this ground it be right that the measure in question be rejected, so ought every other measure that ever has been or can be proposed: for of no measure can anybody be sure but that it may be followed by some other measure or measures, of which, when they make their appearance, it may be said that they are bad.

If, then, the argument proves anything, it proves that no measure ought ever to be carried, or ever to have been carried; and that, therefore, all things that can be done by law or government, and therefore law and government themselves, are nuisances.

This policy is exactly that which was attributed to Herod in the extermination of the innocents: and the sort of man by whom an argument of this sort can be employed, is the sort of man who would have acted as Herod did, had he been in Herod's place.

But think, not only what sort of man he must be who can bring himself to employ such an argument; but moreover, what sort of men they must be to whom he can venture to propose it—on whom he can expect it to make any impression, but such a one as will be disgraceful to himself. "Such drivellers," says he to them in effect, "such drivellers are you, so sure of being imposed upon by any one that will attempt it, that you know not the distinction between good and bad; and when, at the suggestion of this or that man, you have adopted any one measure, good or bad, let but that same man propose any number of other measures, whatever be their character, ye are such idiots and fools, that without looking at them yourselves, or vouchsafing to learn their character from others, you will adopt them in a lump." Such is the compliment wrapt up in this sort of argument.—ii. 421.

THE FALLACY OF "DON'T ARGUE AGAINST THE USE FROM THE ABUSE."

Be the institution what it may, whatsoever good effects there are that have resulted from it, these constitute, as far as experience goes, the *use* of it; whatsoever ill effects have resulted from it, these, in so far at least as they have been the object of foresight and the result of intention, constitute the *abuse* of it.

Thus as to past results: and the same observation applies to expected future ones.

Now then come the fallacies to the propagation of which it may and must have been directed:—

1. In taking an account of the effects of an institution, you ought to set down all the good effects, and omit all the bad ones.

This is one of the purposes to which it is capable of being applied: this needs not much to be said of it.

2. In taking an account of the effects of an institution, good and bad, you ought not to argue against it on the supposition that the sum of the bad ones is greater than the sum of the good ones, merely from the circumstance, that among all its effects taken together, there are some that belong to the bad side of the account.

In this latter sense, such is the character of the maxim, that nothing can be said against the truth of it. As an instruction, it is too obvious to be of any use: in the way of warning, it cannot by possibility do any harm; nor is it altogether out of the sphere of possibility, that in this or that instance it may have its use.

Applied to a man's pecuniary affairs, it amounts to this; viz. Conclude not that a man has no property because he has some debts.—ii. 469.

FALLACY THAT "THE END JUSTIFIES THE MEANS."

The end justifies the means. Yes: but on three conditions, any of which failing, no such justification has place:—

1. One is, that the end be good.

2. That the means chosen be either purely good—or if evil, having less evil in them than on a balance there is of real good in the end.

3. That they have more of good in them, or less of evil, as the case may be, than any others, by the employment of which the end might have been attained.

Laying out of the case these restrictions, note the absurdities that would follow.

Acquisition of a penny loaf is the end I aim at. The goodness of it is indisputable. If, by the goodness of the end, any means employed in the attainment of it are justified, instead of a penny, I may give a pound for it: thus stands the justification on the ground of prudence. Or, instead of giving a penny for it, I may cut the baker's throat, and thus get it for nothing: and thus stands the justification on the ground of benevolence and beneficence.—ii. 470.

FALLACY THAT THERE ARE NO GRIEVANCES WHERE THERE ARE NO COMPLAINTS.

A new law or measure being proposed in the character of a remedy for some incontestable abuse or evil, an objection is frequently started to the following effect:—"The measure is unnecessary; nobody complains of disorder in that shape in which it is the aim of your measure to propose a remedy to it: even when *no* cause of complaint has been found to exist, especially under governments which admit of complaints, men have, in general, not been slow to complain; much less where any just cause of complaint has existed." The argument amounts to this:—Nobody complains, therefore nobody suffers. It amounts to a *veto* on all measures of precaution or prevention, and goes to establish a maxim in legislation, directly opposed to the most ordinary prudence of common life;—it enjoins us to build no parapets to a bridge till the number of accidents has raised an universal clamour.

The argument would have more plausibility than it has, if there were any chance of complaints being attended to—if the silence of those who suffer did not arise from despair, occasioned by seeing the fruitlessness of former complaints. The expense and vexation of collecting and addressing complaints to Parliament being great and certain, complaint will not commonly be made without adequate expectation of relief. But how can any such expectation be entertained by any one who is, in the slightest degree, acquainted with the present constitution of Parliament?*

* First published in 1824.

Members who are independent of, and irresponsible to the people, can have very few, and very slight motives for attending to complaints, the redress of which would affect their own sinister interests. Again, how many complaints are repressed by the fear of attacking powerful individuals, and incurring resentments which may prove fatal to the complainant!—i. 430.

AUTHORITY.

Where, under the name of deference to authority, or under any other name, the adoption of opinions without examination, and upon trust, is made matter of merit, any one opinion is just as easily adopted as any other: the highest wisdom takes a pride in sinking itself to the level of the lowest folly: and now it is that self-contradictory propositions obtain credence, and *that* not merely with as little difficulty, but even with less difficulty than is experienced by propositions less directly and palpably repugnant to reason and common sense.—vi. 49.

A MIND IN SEARCH OF TRUTH.

Perhaps a short sketch of the wanderings of a raw but well-intentioned mind, in its researches after moral truth, may, on this occasion, be not unuseful: for the history of one mind is the history of many. The writings of the honest, but prejudiced, Earl of Clarendon, to whose integrity nothing was wanting, and to whose wisdom little but the fortune of living something later; and the contagion of a monkish atmosphere: these, and other concurrent causes, had listed my infant affections on the side of despotism. The Genius of the place I dwelt in, the authority of the State, the voice of the Church in her solemn offices: all these taught me to call Charles a martyr, and his opponents rebels. I saw innovation where, indeed, innovation—but a glorious innovation—was, in their efforts to withstand him. I saw falsehood where, indeed, falsehood was, in their disavowals of innovation. I saw selfishness, and an obedience to the call of passion, in the efforts of the oppressed to rescue themselves from oppression. I saw strong countenance lent, in the sacred writings, to monarchic government; and none to any other. I saw *passive obedience* deep stamped with the seal of the Christian Virtues of humility and self-denial.

Conversing with lawyers, I found them full of the virtues of their Original Contract, as a recipe of sovereign efficacy for reconciling the accidental necessity of resistance with the general duty of submission. This drug of theirs they administered to me to calm my scruples ; but my unpractised stomach revolted against their opiate. I bid them open to me that page of history in which the solemnization of this important contract was recorded. They shrunk from this challenge : nor could they, when thus pressed, do otherwise than our author* has done—confess the whole to be a fiction. This, methought, looked ill. It seemed to be the acknowledgment of a bad cause, the bringing a fiction to support it. " To prove fiction, indeed," said I, " there is need of fiction ; but it is the character of truth to need no proof but truth. Have you then really any such privilege as that of coining facts? You are spending argument to no purpose. Indulge yourselves in the license of supposing that to be true which is not, and as well may you suppose that proposition itself to be true which you wish to prove, as that other whereby you hope to prove it." Thus continued I, unsatisfying and unsatisfied, till I learnt to see that *utility* was the test and measure of all virtue : of loyalty as much as any : and that the obligation to minister to general happiness was an obligation paramount to, and exclusive of any other. Having thus got the instruction I stood in need of, I sat down to make my profit of it. I bade adieu to the Original Contract : and I left it to those to amuse themselves with this rattle, who could think they needed it.—i. 268-269.

BELIEF.

Truth can operate only by supporting evidence : it cannot change sensation ; it cannot change the sentiment of truth and falsehood. It is the ignorance of the powers of nature, of the extent of them, and of their limits, that is the cause of the credulity of the common people. Miracles and the secrets of nature to these behove to stand upon the same footing. To remove mountains by a word, may seem as easy as to draw fire from the clouds,—that is, according to the vulgar speech, from heaven—or to make iron swim.

Offering rewards for faith, and punishments for the want of it, is, therefore, like offering rewards for, and punishing the want of, prejudice and partiality in a judge. To say, believe this pro-

* Blackstone. The passage is taken from a note to the " Fragment on Government."

position rather than its contrary, is to say do all that is in your power to believe it.

Now, what is in a man's power to do, in order to believe a proposition, and *all* that is so, is to keep back and stifle the evidences that are opposed to it. For, when all the evidences are equally present to his observation, and equally attended to, to believe or disbelieve is no longer in his power. It is the necessary result of the preponderance of the evidence on one side over that on the other.—x. 146.

ORIGIN OF BELIEF—CAUSE OF BIGOTRY.

Take any supposed past matter of fact whatever, giving to it its situation in respect of place and time. At the time in question, in the place in question, either it had existence, or it had not: there is no medium. Between existence and non-existence there is no medium, no other alternative. By probability—by improbability,—by each of these a medium is supposed—an indefinite number of alternatives is supposed.

At the same time, the same matter of fact which to one man is probable, or (if such be his confidence) certain, is to another man improbable, or, if such be his confidence, impossible.

Often and often, even to one and the same man, at different times, all this group of fictitious and mutually incompatible qualities have manifested themselves.

If his persuasion be felt to be of such a strength, that no circumstance capable of being added to the supposed matter of fact could, in his view of the matter, make any addition to that strength; or if, on looking round for other conceivable matters of fact, he fails of finding any one, in relation to which his persuasion of its non-existence could be more intense,—*impossible* is the epithet he attaches to the supposed matter of fact—impossibility is the quality which he ascribes to it.

If, on the other hand, a circumstance presents itself, by which, in his view of the matter, an addition might be made to the intensity of such disaffirmative persuasion; or if the supposed matter of fact presents itself as one in relation to which his persuasion of its non-existence might be more intense; in such case, not *impossible*, but *improbable*, is the epithet,—not *impossibility*, but *improbability*, is the quality ascribed.

Certainty, which is the opposite to impossibility, or rather of which impossibility is the opposite, is applied to the persuasion,

and from thence to the supposed matter of fact. It is not, any more than impossibility, applied or applicable to testimony.

As certainty, so uncertainty, applies itself to the persuasion and the fact, and not to the testimony. In the scale of persuasion, it embraces all degrees except the two extremes. The existence of a fact is not matter of uncertainty to me, if the fact be regarded by me as impossible.

Certainty, therefore, has for its opposite, *uncertainty* in one way—*impossibility* in another. Uncertainty, in the language of logicians, is its contradictory opposite—impossibility, its contrary opposite.

The fiction by which (in considering the strength of a man's *persuasion* in relation to this or that fact, and the probative force of any other matter of fact when viewed in the character of an evidentiary fact in relation to it) occasion is taken to ascribe a correspondent quality, indicated by some such words as *certainty* and *probability*, to the principal fact itself,—appears to be like so many other figments, among the offspring of the affections and passions incident to human nature. It is among the contrivances a man employs to force other men to entertain, or appear to entertain, a persuasion which he himself entertains or appears to entertain, and to make a pretence or apparent justification for the pain which he would find a pleasure in inflicting on those on whom a force so applied should have failed to be productive of such its intended effect.

Were it once to be allowed, that, as applied to the facts themselves which are in question, probability and certainty are mere fictions and modes of speaking: that all of which, on any such occasion, a man can be assured, is his own persuasion in relation to it; that that persuasion will have had for its cause some article or articles of evidence, direct or circumstantial, real or personal, and will be the result of, and in its degree and magnitude proportioned to, the probative force of that evidence; that of such evidence, neither the probative force, nor consequently the strength of his persuasion, are at his command; that it is not in the power of any article of evidence to have acted with any degree of probative force upon; nor consequently to have given existence to any persuasion in a mind to which it has not been applied; and that therefore it is not in the power of any evidence to give either certainty or probability to any matter of fact (the matter of fact being, at the time in question, either in existence or not in existence, and neither the evidence nor the persuasion being capable of making any the slightest change in it;) that it depends in a considerable degree upon the mental constitutions of

A and B respectively, what sort of persuasion, if any, shall be produced in their minds by the application of any given article of evidence; and that it is no more in the power of evidence applied to the mind of A, and not to that of B, to produce in the mind of B, a persuasion of any kind, than it is in the power of evidence applied to the mind of B, and not of A, to produce a persuasion on the mind of A;—were all this to be duly considered and allowed, neither the existence nor the non-existence of a persuasion concerning a matter of fact of any sort, would have the effect of presenting to any person any other person as a proper object of punishment, or so much as resentment.

But the certainty of this or that fact is assumed as perfect and indisputable: and thus he of whom it is conceived that he fails of regarding, or of representing himself as regarding, that same fact in such its true light, is on no better foundation considered and treated as being either mendacious, or perverse and obstinate: perverse and obstinate, if he fails of regarding it in that light—mendacious, if, it being impossible to him to fail of regarding it in that light, he speaks of himself as if he did not.

When a man is himself persuaded—or though he does but, under the impulse of some interest by which he is actuated, appear to be, or profess to be, persuaded—of the existence of a fact, —it is matter of pain and vexation to him to suppose that this same persuasion fails of being entertained, still more to observe that it is professed not to be entertained, by those with whom, on the occasion of it, he has to deal.

Hence it is that, in his mind and in his discourse, to entertain it is made matter of merit—to fail to entertain it, matter of demerit and blame, on the part of others with whom he has to do: and, to cause them to pursue that supposed meritorious line of conduct, the power of reward, if within his reach, is employed; and to deter them from the opposite conduct, even the power of punishment: of both which powers, in the application thus made of them, mankind have been unhappily accustomed to see and to feel the exercise, carried to a pitch so repugnant to the dictates of humanity and reason.—78-79.

IMPOSSIBILITIES DISTINGUISHED FROM VERBAL CONTRADICTIONS.

In a loose and popular sense, nothing can be more frequent than the use of the word *impossible*, and its conjugate *impossibility:*

frequent, and (such is the exigency of language,) we may venture to say, *necessary*. But, if applied to the subject of judicial evidence to express an idea distinct from, and (if one may so say) superior to, that of improbability—a high degree of improbability,—it then becomes productive of the confusion above spoken of.

The impropriety of introducing the word in this strict sense, on a judicial occasion, (not to speak of other occasions,) may be rendered apparent by this consideration, viz. that in the use of it in this sense is involved the assumption of omniscience and infallibility on the part of him who uses it.

Examples lending an apparent countenance to the use of it in this strict sense, may, I am aware, not be altogether wanting: but, upon a closer inspection, it will appear, that the objects in question either do not come at all under the notion of facts, or at any rate not under the notion of such facts as are capable of being made the subject of evidence.

Take the following examples:—

1. It is impossible for the same thing to be, and not to be. The negative or opposite of this, it may be said, is a fact, the incredibility of which will be recognised by everybody. And so with the two following:—

2. Where there is no property, there is no injustice.

3. Two and two make four.

Answer.—In the first case, no *fact*, properly speaking, is concerned. In that case we have a proposition; but it has not any fact for the subject of it. Examined closely, it will be found to be no more than a proposition concerning the signification of words. So vague and so inapplicable to any useful purpose is the import it conveys, that it is difficult to say what it does amount to: perhaps an observation relative to the use of the word *not;* showing an occasion on which it cannot with propriety be employed.

No fact at all being indicated by the proposition in question, no fact is indicated by it capable of forming a subject of controversy in a court of justice.

2. The second supposed example is brought to view on account of the deserved celebrity of the author,* and as an instance to show how idle and nugatory may be the language of the acutest mind, when dealing with propositions of an extensive import, without having as yet scrutinized into their contents, and applied them to particulars.

* Locke.

Howsoever it may be with the preceding proposition, this one may readily be seen to be neither more nor less than a proposition concerning the import of words. Where you cannot, in the way in question, employ the word *property*, neither can you, in the way in question, employ the word *injustice*.

3. That the proposition, two and two make four, is neither more nor less than a proposition concerning the import of words, seems evident enough, as soon as intimated. To these same apples to which, when taken together, I apply the numeral word four,—to these same bodies, when divided into two parcels equal in number, I apply respectively the numeral words two and two; and in both cases with equal propriety, and conformity to the usage of language. In this, then, we have another instance of a proposition not enunciative of any fact—of any fact having for its subject-matter anything other than the occasion on which the words in question have been wont, in the language in question, to be employed.

In this example, then, we do not see any exception to the general proposition in question; viz. the proposition, that, of facts liable to be the subject of judicial controversy, there is no assignable one which all men would be sure to be agreed in speaking of as incredible:—and this for the three following reasons:—

1. The proposition in question—two and two make four—is not, properly speaking, the enunciation of a matter of fact,—only of a manner of employing words.

2. If that, which it is an enunciation of, *were*, properly speaking, a matter of fact, it would not be of the number of those facts which are liable to be the subject of judicial controversy or exhibition.

3. Although it were a fact, and liable to be the subject of judicial controversy or exhibition, there would be no assurance that all men would be agreed in speaking of the existence of it as certain, or the negation of it as incredible.—vii. 80-81.

MORAL AND PHYSICAL IMPROBABILITY AND IMPOSSIBILITY.

Improbability or impossibility, is either physical, that is natural, or moral. A fact may be said to be physically improbable, when it is considered as being inconsistent with the established and known order of things—with any of those rules and propositions which have been deduced from the general observation of

mankind, and are termed laws of nature : such as, for instance, that which asserts as a known matter of fact, the weight or gravity of all the bodies that we see in, upon, or near to this earth ; that property, whereby, if a man jump up from the surface of the earth, he feels himself drawn down again.

A fact is said to be morally improbable, when it is considered as being inconsistent with the known course of human conduct. This species of improbability is confined to such facts as have their place in the human mind : such as the entertaining of such and such perceptions, conceptions, intentions, wishes ; the being animated by such and such motives, under the existing circumstances of the case.

The degree of distrust produced in the mind of a judge by the improbability of the alleged fact, when that improbability is of the physical kind, as above, will depend upon the confidence he has in his own knowledge respecting the powers and order of nature so far as the particular fact in question is concerned. If he have any doubt, he will do well to have recourse to scientific evidence—to call in the opinion of such persons as, by their professional situation or reputation, are pointed out to him as being particularly well informed in relation to matters of that sort.

Thus suppose, upon the testimony of two witnesses, a demand made upon a man for money in satisfaction for damage done to a garden by the fall of the first inhabited air-balloon that ever rose : and from reflection on the weight of bodies, suppose the judge to have been inclined to disbelieve the testimony, on the ground of the apparent improbability of the fact. In such case, he would have done well to call in the opinion of some lecturer or lecturers on natural philosophy ; and accordingly, supposing him so to have done, he would have learned from them that there was really no inconsistency between what he had always observed and heard concerning the heaviness of bodies in general, and what the witnesses had been deposing concerning the extraordinary lightness of the particular body so raised.

Concerning moral improbability, as above described, every man acting in the situation of a judge will naturally consider himself as competent to pronounce. A man on these occasions looks into his own mind, and asks, as it were of himself, whether it be probable or possible, that in the circumstances in which the person in question is stated by the evidence as entertaining such and such perceptions, conceptions, intentions, wishes, and the like, it could have happened in such circumstances to himself to have entertained any such perceptions, conceptions, intentions, wishes, and the like.—vi. 153.

BELIEF IN THE SUPERNATURAL.

Take one of the vulgar cases of witchcraft,—at present in civilized countries a ludicrous one—in most Christian countries not very long ago, in some parts of some such countries perhaps even now, but too serious a one. An old man, or (to take the more common case) an old woman, travelling, at pleasure, with prodigious velocity, and in every direction, through the air, without any assistance at all for the journey, or none better than what may be supposed to be afforded by a broomstick :—Do you believe it? No. Why? Because it is impossible: it is a fact in itself impossible. Are you in your senses? you will say so too. Would you have us go out of the subject, call in other facts, and attempt to reason about it? The very attempt to reason would be an irrational one.

The firmness of my persuasion on the subject can hardly be exceeded by any that could be entertained by a person, who, speaking of it, should employ such language as is above. But as to the source of that persuasion, upon examining it, I do not find it quite so simple. Were a fact of the description in question to be reported to me, I should regard it as not true. For what reasons? Because (not to look out for any mere repugnancies) it stands in contradiction, for example, to two physical laws. One is, that no body ever changes its place without some specific cause of motion: another is, that, even when exposed to the action of any such specific cause of motion, no body suffers any such change of place, unless the force of such specific cause be in a degree sufficient to overcome the impediment opposed by the attraction of gravity.

Such are the two laws in question: but, in alleging (as I do for shortness) the existence of these two ideal, and as they might be termed *verbal*, laws, what is it that I allege in substance? In truth nothing more, in either case, than an assemblage (though that an immensely multitudinous one) of facts agreeing with each other in a certain point of view—with which facts the extraordinary phenomenon in question is seen to be unconformable. All bodies that I know anything of, tend towards the centre of the earth. By what consideration is it, that I am led to form a proposition so general and exclusive? By these which follow. Every motion I make or experience, every minute of time I sit or stand without any considerable motion, every motion I feel or see on the part of other bodies, concurs in giving me a confirma-

tion of the truth of it, so far as depends upon the evidence of my own senses. Do I apply for further information to the presumed experience and observation—to the actual relation and declaration, of other individuals, my fellow-creatures?—the information runs constantly, and without any the least exception, in the same strain. Oral evidence and written evidence—men and books—books touching on this particular subject directly and professedly—books touching on it incidentally and collaterally,—all concur in giving evidence on the same side. All this body of information, all this immense and continually accumulating body of information, may at any time, so far as it were worth while to pursue the thread of analysis, be resolved into so many distinct articles of evidence, ranged under the heads of distinction already exhibited in this work.

After all, what does it amount to? Not any direct evidence disaffirming the existence of the supposed magic journey. What then? So many articles of circumstantial evidence: neither more nor less. But this circumstantial evidence, this supposed disaffirming evidence (it may again be asked,)—how does it disprove the truth of the supposed affirmative evidence? In no other individual instance was motion ever produced without a distinct assignable cause, referable to some one or other of the enumerated heads—in no other individual instance was the force of gravity ever overcome by a force less considerable than its own: to come to the point at once, in no other individual instance was an old woman ever carried through the air, either without any assisting instrument, or with an instrument of no greater degree of appropriate efficacy than a broomstick, by the exertions either of her own volition, or by the exertions of the volition of any other being, (such, for example, as a devil,) applying itself to her bodily faculties for that purpose.

But, from the non-existence of any such extraordinarily produced motions in those instances, numerous as they are, how does it follow that no such motions have been produced in this instance? In none of those instances has there been any direct evidence affirming the existence of such extraordinarily produced motions. But in this instance such affirmative evidence does exist. Continue then to disbelieve the existence of such extraordinarily produced motions in those several instances; but think not, from their non-existence in those instances, to prove their non-existence, much less their impossibility, in this. Think not that, because their existence is not to be believed without evidence, therefore their existence can be reasonably disbelieved against evidence.

I should not expect to find in the person of any reader of these pages, an individual in whose mind a persuasion of the existence of any such aërial journey would, by the above train of reasoning, be produced. On the other hand, neither do I see how it is possible to contest the truth of it, so far as concerns the position it rests upon,—to wit, that all the argument that is adduced, or can be adduced, in disproof of such supposed fact, amounts to no more than this observation, viz. the want of consistency, conformity, agreement, analogy, (take what word we will, it makes no difference,) between this extraordinary supposed fact, and the ordinary facts above brought to view, of the truth of which we have been sufficiently persuaded by direct evidence. Yet upon no stronger or other ground than this disconformity, we scruple not to disbelieve such extraordinary facts; and that with so firm a degree of persuasion, as without difficulty, and almost without thought, to pronounce them to be *impossible*.

So far, so good: but this propensity in our minds, does it alter, does it influence in any respect, the nature of the facts themselves? By disbelieving the existence, past, present, or future, of any fact whatsoever, is it in our power to destroy, to annihilate, its existence? to cause a fact never to have existed, for example, that in truth has existed? Unquestionably not. Most certainly, not any influence on the existence of the facts themselves can be exercised by the opinion such beings as we entertain of their existence. Yet, after all, when we come to inquire what is the nature of the effects which any such disconformity (or rather our observation of the existence of such disconformity, which is all we have of it,) is capable of producing,—the answer is, a disposition on our part to disbelieve the existence of the supposed extraordinary fact: a tendency in our own minds, not any tendency in the facts themselves.

Thus much indeed may be added, viz. that so often as a man in his proceedings assumes the falsity of such facts, so often will he, in that respect, act rationally, and find his conclusions warranted by experience: so often as he assumes the truth of them, and acts upon that foundation, so often will he find himself deceived—completely and deplorably deceived. This argument, after all, will, upon a strict scrutiny, appear to amount to nothing: to be in appearance perhaps a distinct and additional argument, but, in truth, so much of it as is true, no more than the same represented over again in another point of view. As to everything that is to come—as to all supposed future results—it is mere surmise, mere opinion, without facts, without evidence;

a mere assumption of the matter in dispute. As to all past results, it amounts to no more than the already alleged and admitted disconformity, served up only in another shape.

What, then, is the true reply to the argument in question, supposing it adduced by a believer in witchcraft—adduced for the purpose of weakening our confidence in the proof afforded, by the disconformity in question, of the non-existence of that practice? It is this;—viz. that whatever argument is capable of being brought forward for the purpose of weakening our confidence in the argument indicative of the non-existence of that practice, applies in like manner, but with much greater force, to every argument that can be brought forward in favour of its existence. The travelling of old women, with or without broomsticks, through the air, is that sort of event which even you who affirm the existence of it in this or that particular instance, admit not to be a common one. But the existence of persons who, by any one of a great variety of motives, are impelled, and eventually compelled, to exhibit relations of facts, ordinary as well as extraordinary, which, on examination, prove not to be true, is a fact unhappily but too often verified. The action of old women in the character of witches, is a fact which, according to your own statement, has happened but now and then, at this or that particular time and place; but the action of men and women, old and young, with brooms and without, in the character of liars, is that sort of event which has been happening at all times and in all places of which we have any account. This is so true, that a wager (for though a wager is no direct proof of any fact which is the subject of it, it is, however, a proof of the real confidence of him who joins in it, and a punishment for rash confidence on the part of him who loses it,) in the character of an argument *ad hominem* at least, a wager on this subject might be brought forward, not altogether without congruity. Show witches on your part, while I on my part show liars, for the space of a term in Westminster Hall, at so many guineas a-head, and see whose purse will be fullest at the end of it.

When I have to choose between believing a common, and believing an uncommon, event, I believe the former, in preference to the latter. Why? Because, in the very words which I make use of, it is implied, that the event called common has hitherto been of more frequent occurrence than the event called uncommon: and to suppose that, having been hitherto more frequent, it will continue to be so, is only to believe, what all experience testifies, that the course of nature is uniform.

The conclusion seems to be, that, in support of a persuasion of the impossibility of any fact, the best and utmost proof which the nature of the case admits of, is the indication of its disconformity with some class of facts indicated by those propositions which, for the convenience of discourse, have been received under the appellation of laws of nature: and that such proof, so given, of such disconformity, may, with propriety, be referred to the head of circumstantial evidence.

Certainty, absolute certainty, is a satisfaction which on every ground of inquiry we are continually grasping at, but which the inexorable nature of things has placed for ever out of our reach. Practical certainty, a degree of assurance sufficient for practice, is a blessing, the attainment of which, as often as it lies in our way to attain it, may be sufficient to console us under the want of any such superfluous and unattainable acquisitions.—vii. 103-104.

IMPERFECTION OF THE EVIDENCE IN SUPPORT OF SUPERNATURAL APPEARANCES.

I. No fact of this class was ever established by that sort of evidence which, under the best system of procedure in respect to evidence, is considered as the best evidence, extracted in the best manner; and which, though termed the best sort, is not to be considered as an extraordinary sort, but the sort which is ordinarily required and obtained in ordinary cases.

II. Accordingly, anti-physical facts are seldom represented anywhere—never in the face of justice—as having manifested themselves in the presence of divers persons at the same time.

In the instance of ghosts and apparitions, this has already been matter of general observation. Why so?

1. A persuasion of this sort has in many instances been sincere—the consequence of delusion. In the instance of a celebrated author of Berlin,* to whom we are indebted for a most curious and instructive account of his own case, the appearance was the result of bodily indisposition; and the unreality of the existence of a correspondent external object known by the patient at the time. The apparition appears not to two persons at once. Why? Because two persons are not subject to the same indisposition,

* Nicolai, in Tilloch's Philosophical Magazine, and Hibbert's Philosophy of Apparitions.

bodily or mental, manifesting itself in the same manner, at the same time.

2. Where the reported perception has not had delusion, but self-conscious mendacity, for its cause, it has never happened that two persons have concurred in the utterance of such report, on any judicial, or solemn—though extra-judicial, occasion. Why? Because of the extreme and manifest difficulty of carrying through any such plan of imposition with success. Subjected to examination, they could not hope to escape contradicting themselves, as well as one another. Accordingly, when a man embarks in a plan of this kind, he chooses the company and the occasion, and takes care not to expose his tale to contradiction, designed or undesigned, from a confederate.

III. The anti-physical facts thus reported are never of the permanent, but always of the evanescent, kind.

Why? Because, were they of the permanent kind, the production of the object constituting the material source of the *real* evidence would of course be called for: nor could credence be expected, unless it were produced. This case, when looked nearly into, is found resolvable into the preceding one. Why? Because, supposing the source of evidence produced, and the evidence extracted from it, under the eye of the judge, the anti-physical fact manifests itself in the presence of divers persons at once.

If, in any instance, the exhibition of the anti-physical fact in the presence of divers persons has been undertaken or attempted, it has been in the way of legerdemain and imposture. What, then, is legerdemain? It is the apparent violation of some law or laws of nature; the circumstances which, if known, would show that no such violation existed, being concealed.

Upon this view of the matter, it should seem that those who maintain, in the character of a universal proposition, the non-existence of such physical facts as above described, may safely and even consistently admit their existence, in the event of their being deposed to by a considerable number of unexceptionable witnesses, some or all of them of good character, their testimony being extracted by a judicial examination, conducted with competent ability, in the best mode.—vii. 105-106.

THE CREDULITY OF IGNORANCE.

By the relative credibility or incredibility of a fact, I understand the chance it has of being believed or disbelieved by a given person.

The relative incredibility, as regards a particular person, of an

anti-physical fact—a fact amounting to a violation of a law of nature—will be in proportion to his acquaintance with the laws of nature. Suppose a person altogether unacquainted with the laws of nature, yet not altogether unaccustomed to hold converse with mankind; he would, upon the credit of a bare assertion, uttered by any person of his acquaintance, give credit to one fact as readily as to another; to the most flagrantly anti-physical fact, as well as to the most common fact; to a fact the most devious and extraordinary in degree or species, as well as to the most ordinary fact; to the existence of a ghost or a devil, as well as to that of a man; to the existence of a man sixty feet, or no more than six inches high, as well as to that of a man of six feet; to the existence of a nation of cyclops, with but one eye each, and that in the middle of the forehead, as well as to the existence of a nation with two eyes in their ordinary place.

In this respect, all nations as well as all men are children for a time. Among savages, not to speak of barbarians, the mental state cannot be regarded but as a state to which this supposition is in a great degree applicable.

What is there that would not be believed in a nation in which it was generally understood—so generally as to be a position acted upon by law, that guilt or innocence, mendacity or veracity, was to be determined by a man's walking blindfold hurt or unhurt in a maze of red-hot ploughshares?

Of a given apparently anti-physical fact, the relative incredibility will be apt to increase, not only with a man's acquaintance with the laws of nature, but with his acquaintance with the history—the correspondent part of the history, of the human mind; with the observations he has had occasion to make of the extreme frequency of incorrectness and mendacity among mankind, or rather of the extreme rarity of the opposite phenomena; of the extreme frequency of the instances in which either the one or the other has been reduced to certainty, sometimes by irreconcilable contradictions, as between divers reports of the same transaction —sometimes by self-contradiction on the part of each.

* * * * * * * * *

Suppose a Turk, of the ordinary class of Turks in point of education, to have been told of the elevation of a number of persons in the air, and of the aërial voyage performed by them; and this by a bare statement of the fact so far as above described, and without any indication given of the cause by which the elevation was produced. Probably enough, neither disbelief, nor so much as any considerable surprise, would in his mind have been the result. To his disposition to give credence to this, or any other

fact of the extraordinary class, no great addition could probably remain to be made by ocular demonstration. Whatever fact of this description could be related to him, would be rendered sufficiently credible by a word, whatever it be, of which in English the words magic or sorcery serve for representatives. By the Turks, Christians are considered either as being in general magicians, workers of wonders, or, at least, as abounding in magicians: and by magic, one thing may be done as well as another. The contents of the machine by which this wonder was achieved, were in fact composed of rarefied air:—had this account of it been given to him, would he have credited it? Not unlikely; and so would he, as likely, had they been represented to him as composed of lead. To a people to whom the face of nature is not visible through any other medium than that of the Koran, one fact is not more unconformable to the course of nature than another.

When an air-balloon, on the hydrogen-gas principle, performed for the first time, at St Petersburg, an aërial voyage,—certain Japanese, who having been shipwrecked somewhere in Kamschatka, had from thence been conveyed to Petersburg, were of the number of the spectators. All the rest were wrapped up in amazement: the Japanese alone remained unaffected. A Russian noticing their unconcern, and asking for the cause of it,—"Oh!" said a Japanese, "this is nothing but magic; and in Japan we have practitioners in magic in abundance."—vii. 91-94.

FOUNDATION OF BELIEF IN TESTIMONY.

Ask what is the foundation or cause of belief?—of persuasion? I answer, without difficulty, *experience*. Ask what is the foundation, the cause of the belief in the truth of human testimony?—of the persuasion entertained by one man of the truth of the statements contained in the testimony of another, in any given instance? I answer again, the experience of the truth of testimony in former instances. Discard the substantive word *cause*, and give me, instead of it, the import of it in disguise—disguised under the adverbial covering of the word *why*;* and ask me why

* Of the single word,—the *adverb*, as it is called,—the verb *why*, the import, when developed, is found to be an entire proposition, and even a complex one. *My will is, that you name to me that thing which is the cause of that other thing.* So great was the error of the ingenious author of Hermes, when in his analytical view of the grammatical forms called *parts of speech*, he attributed to the object represented by the adverb, the same simplicity as to the object represented by the noun substantive. Here, by the single adverb, we find represented, amongst others, the several objects respectively represented by no fewer than six nouns substantive.

I find myself disposed, in most cases, to believe in the truth of the statements made in my hearing by my fellow-men? I answer, —because, in the greater part of the instances in which such statements have been made, the truth of them has been made known to me by experience. In the experience I have had of the truth of the like statements in past instances, I view the cause of the propensity I find in myself to believe the truth of the statement in question in the present instance—to pronounce, in my own mind, the sort of judgment indicated by the words *I believe.*

Press me further, and ask me *why* it is that, on recollection of the truth of such statements in former instances, as certified to me by experience, I believe?—ask me why it is that such experience produces belief; what is that ulterior and deeper or higher cause, that causes experience to be the cause of belief?—you ask me for that which is not mine, nor anybody's, to give; you require of me what is impossible.

It may probably enough have appeared to you that what you have been doing, in putting to me that question, amounts to no more than the calling upon me for a proposition, to be delivered to you on my part. But the truth is, that, in calling upon me to that effect, you have yourself, though in an obscure and inexplicit way—you have yourself, whether you are aware of it or no, been delivering to me a proposition—and a proposition which, if my conception of the matter be correct, is not conformable to the truth of things. The proposition I mean is, that over and above, and distinct from, those objects which you have in view, in speaking of the words *experience* and *belief*, of which the first represents the cause, and the other the effect,—there exists a distinct object, in the character of an ulterior and higher cause, which is the cause of the causative power exercised by that first-mentioned cause: such is the proposition which is comprehended and assumed in and by your interrogative proposition beginning with the word *why;* but, to my judgment of the matter, this indirectly-advanced proposition presents itself as erroneous. For, upon looking for such supposed distinct object, as the archetype of, and thing represented by, the word cause, as now, on the occasion of this second question, employed by you, it does not appear to me that any such object exists in nature. If ever it should happen to you to have discovered any such archetype, do me the favour to point it out to me, that I may look at it and examine it. Till you have done so, it will not be in my power to avoid considering as erroneous the proposition which you have been delivering to me in disguise.

What I have been able to see in the matter is as follows, viz.—

1. Certain facts, viz. of the physical kind (for such alone, to simplify the case, let us take)—the facts presented to me by experience.

2. Another fact, viz. of the psychological kind, the sort of internal feeling produced in my mind, and designated by the word *belief*. Both these are really existing objects: my feeling—my belief,—an object possessing at any rate whatever reality can be possessed by an object of the psychological kind,—and those physical objects, by which it seems to me that it has been produced, or at any rate in consequence of which it has made its appearance on my mind. The aggregate of all those physical facts is what, on this occasion, I look upon as the *cause*: the feeling produced in my mind—the belief—is what I look upon as the *effect*.

What higher, what deeper, what intermediate—in a word, what other cause, would you have? What can it be?—what should it be? If, which is possible, your request were to be complied with, what would you be the better for it? Would you be any the wiser for it, the richer? or even the more contented? Alas! no: no sooner had you got this higher cause, than you would be returning again to the charge, and asking for one still higher; and so on again, without end. For, by the same reason (if there were one) by which you were justified in calling upon me for this first arbitrarily assumed and phantastically created cause, you will be justified in calling upon me, and, indeed, bound to call upon me, for another; and so another and another, without end.

By pressing me still further—between the set of physical objects, the aggregate of which is spoken of as constituting the *cause*, and the psychological object (*my belief*) spoken of under the name of the *effect*,—you may, if you insist upon it, oblige me to interpolate a number—almost any number, of intermediate causes. But among these intermediate causes, be they multiplied *ad infinitum*, you will never find that recondite, that higher-seated or deeper-seated cause which you are in quest of. From the material physical objects in question, came the appearances, evanescent or permanent, issuing from those material objects; from those appearances, presenting themselves through the medium of sense to the minds of the several percipient witnesses in question, came the feelings of the nature of belief, in the minds of those several witnesses: in the minds again of those witnesses, by the agency of this or that motive, were produced the exertions by

which the discourses assertive of the existence of those several objects were conveyed to me: by those assertions, thus conveyed to my mind, was produced, on each occasion, in the interior of my mind, a correspondent feeling of *belief:* by the recollection, more or less distinct and particular, or rather by an extremely rapid, and consequently indistinct and general recollection of the aggregate of those feelings, or rather of an extremely minute part of them (for in one extremely minute part is contained all that is possible, and yet quite as much as is sufficient) was produced the belief which my mind entertains at present, affirmative of the existence of the facts contained in the particular statement delivered to me by the particular individual whose testimony is now in question.

Such is the chain, the links of which may be multiplied almost to infinity. Between every two links you may call upon me, if you please, for the cause by which the latter of them is connected with the former; but, in each instance, the answer, for the reason already given, must be still the same—there is no such latent, recondite cause. In your imagination, the picture of it?—yes, if you say there is: in external nature, the original of it, nowhere. —vi. 237-238.

It is in children (it is said) that the reliance on testimony is strongest—strongest in man at that time of life when he has had least experience. Such is the argument, on the strength of which it is concluded that man's reliance on man's testimony has not experience for its ground—experience of the conformity of that testimony to the truth of things; but is produced by an independent innate principle, made on purpose, and acting before experience. Before any experience has taken place, this confidence is at its maximum: as man advances in life, it grows weaker and weaker; and the cause that renders it so, is experience.

A child's reliance on testimony, on the truth of human assertion, antecedent to experience! As if assertions, and experience of the truth of them, were not coeval in his perceptions with the very first instances of the use of language!

Banish the phantom, the offspring of distressed imposture, the innate principle; consult experience, man's faithful and steady guide; and behold on how simple a ground the case stands. In children, at an early age, the reliance on assertion is strongest: why?—Because at that age experience is all, or almost all, on one side. As age advances, that reliance grows weaker and weaker: why?—Because experience is acquired on both sides—experience

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certifying the existence of falsehood as well as that of truth. The proportion of falsehood to truth commonly itself augments; and, though it should not itself augment, that which cannot fail to augment, and of which the augmentation answers the same purpose, is the habit, the occasion, and the facility of observing it.

But if a ferry-boat (says an argument in the same strain)—if a ferry-boat, that had crossed the river 2000 times without sinking, should, by a single supposed eye-witness, whose character was altogether unknown, be reported to have sunk the two thousand and first time: here is a highly improbable event, improbable in the ratio of 2000 to 1, believed upon the testimony of this unknown, and single witness;—believed, and who will say, not rightly and rationally believed?

An improbability of 2000 to 1? No, nor of 1 to 1. Yes, perhaps,—if a ferry-boat, being a thing unlike everything else in nature—or a ferry-boat, and everything else partaking in respect of submergibility of the nature of a ferry-boat—had been known to cross water 2000 times, and never known once to sink. But the aptitude of things in abundance—the aptitude of the materials of which ferry-boats are composed, to sink in water, when pressed by other bodies lying in them, is a fact composed of an immense mass of facts made known by an immense body of experience. Boats of almost all kinds, it is sufficiently known by experience, are but too apt to sink: which thing being considered,—of all those who have seen or heard of a ferry-boat, is there a single person to whom, though the same boat should be known to have crossed the water in question 10,000 times instead of 2000, the report of its having sunk should present itself as in any degree improbable?

Yes: if a boat, composed solely of cork, and that of the same shape with the ferry-boat in question, except as to the being solid instead of being hollow—if a boat of such description were reported to have sunk, and without anything drawing it down, or pressing upon it,—here, indeed, would be an improbability, and such an improbability, as, to the mind of a man conversant with the phenomena and principles of hydrostatics, would not be rendered probable or credible by the report of a thousand witnesses, though they were all of them self-pretended eye-witnesses.—vi. 241.

TRUTH MORE NATURAL TO MANKIND THAN FALSEHOOD.

Children (says a proverb one sometimes hears)—children and fools tell truth. There is something offensive in the proverb:

there is a sort of immoral turn in it—a sort of intimation, as mischievous as it is false, of a natural connexion between veracity and folly. On the first mention of it, one conceives it to have had for its author a species of knave, who, as such, is a species of fool; for, though all folly is not knavery, yet there is no knavery that is not folly. When the covering of immorality and folly is stripped off from it, its foundation, however, appears to be laid in nature. It had been observed as a matter of fact, that veracity in man was more frequent than mendacity—truth than falsehood; that this frequency was particularly great among such classes of persons as, by the complexion of their understandings, were less sensible to the action of a distant interest—such as that sort of interest commonly must be, by which, on occasions of importance, such as those which come before a court of justice, a man can be influenced to step aside from the path of truth. By the first impulse—by the impulse of the universal principle above delineated—by a sort of instinctive impulse, the line in which a man's discourse is urged is invariably the line of veracity—of truth: it is only by reflection—reflection on the distant advantage supposed to be obtainable by falsehood, that a man's footsteps can be turned aside out of that line.—vi. 263.

COLLOQUIAL SOPHISMS.

Avoid all arguments that you know to be sophistical. Think not, by shutting your own eyes against the weakness of your statements, that you have thereby shut the eyes of your hearer. Your sophistry will but irritate, for sophistry is not only uncandid, but dishonest. It is an attempt to cheat, not the purse of another, but his senses and his judgment. His aversion to you will be awakened by your effort to shine at his expense; and his contempt will be roused for the folly that supposed it was able so to shine. In all argument be candid, for the sake of your comrade and for your own sake. The triumph of an argument which is known and felt to be unfair and unfounded, is a wretched exhibition of perversity. If successful, it can serve no interests but those of fraud: if unsuccessful, it brings with it the consequences of blundering and detected dishonesty. Constituted as society is, with its errors and prejudices, its narrow interests and interested passions, the pursuit of truth makes demands enough upon courageous virtue; for he who goes one step beyond the line which the world's poor conventions have drawn around moral and political

questions, must expect to meet with the thundering anathemas and obloquies of all who wish to stand well with the arbiters of opinion. Let no searcher after truth be led into the labyrinths of sophistry. He will have enough to do in order to make good his ground one step beyond that trodden by those who dogmatize about decorum, and propriety, and right and wrong.—*Deontology*, vol. ii. p. 145-146.

INDOLENCE A MOTIVE IN FAVOUR OF VERACITY.

To relate incidents as they have really happened,* is the work of the memory: to relate them otherwise than as they have really happened, is the work of the invention. But, generally speaking, comparing the work of the memory with that of the invention, the latter will be found by much the harder work. The ideas presented by the memory present themselves in the first instance, and, as it were, of their own accord: the ideas presented by the invention, by the imagination, do not present themselves without labour and exertion. In the first instance come the true facts presented by the memory, which facts must be put aside: they are constantly presenting themselves, and as constantly must the door be shut against them. The false facts, for which the imagination is drawn upon, are not to be got at without effort: not only so, but if, in the search made after them, any at all present themselves, different ones will present themselves for the same place: to the labour of investigation is thus added the labour of selection.

Hence an axiom of mental pathology, applicable to the present case—an axiom expressive of a matter of fact, which may be stated as the primary and fundamental cause of veracity in man. The work of the memory is, in general, easier than that of the invention; but to consult the memory alone in the statement given, is veracity: mendacity is the quality displayed, so far as the invention is employed.—vi. 262.

RELIGIOUS TESTS.

Applied to the tenets of any religion, or of any of the various editions of any religion, it [a test] includes in it a certificate of

* I mean as to the narrator they have really appeared to happen. With this explanation, the expression, *as they have really happened*, may be used, instead of the more correct expression, to save words.

the erroneousness and falsity of such tenets. Not that, by this or any other human contrivance, a religion that is true can *itself* be rendered false: not that, by this or any other contrivance, a set of facts, that have actually had place, can be made not to have had place. What it is *not*, is therefore a proof of the falsity of any religion to which it is applied: but what it *is*, is a proof—nor needs there a more conclusive one—of a want of belief in affirmance of such religion, in the breast of those who concur in the application of it.

What!—if these notions, or pretended notions, of yours concerning your religion, be conformable to truth,—if it be the pleasure of the Almighty that the alleged facts on which it rests shall obtain credence,—is it not in the power of the Almighty, without your assistance, to obtain credence for it? You, whoever you are, is it that in yourself you have a power which has been denied to God? But for such assistance as it may please you to give, is the Almighty impotent?—v. 209.

SUBSCRIPTION AT THE ENGLISH UNIVERSITIES.

Of the two English universities, Oxford is the most ancient and most dignified. Of its numerous statutes, which are penned in Latin, as many as fill a moderate duodecimo volume are published, as the title-page declares, for the use of youth: and of these care is taken (for the honour of the government let it be spoken) that those for whose observance they are designed, shall not, without their own default, be ignorant: since, at every man's admission, a copy is put into his hands. All these statutes—as well those that are seen as those that are not seen—every student, at his admission, is sworn in Latin to observe. "So help me God," says the matriculated person, "touching as I do the most holy Gospel of Christ."*

The barbers, cooks, bed-makers, errand-boys, and other unlettered retainers of the university, are sworn in English to the observance of these Latin statutes. The oath thus solemnly taken, there has not, we may be morally certain, for a course of many generations—perhaps from the first era of its institution—been a single person that has ever kept. Now, though customary, it is,

* "Tu fidem dabis ad observandum *omnia* statuta, privilegia, et consuetudines hujus universitatis *Oxon.* Ita te Deus adjuvet, tactis sacro-sanctis Christi evangeliis."—*Parecbolæ sive Excerpta e Corpore Statutorum*, p. 250, Oxon. 1756.

perhaps, not strictly proper, as it tends to confusion and to false estimates, to apply the term *perjury*, without distinction, to the breach of an assertive, and to that of a promissive declaration—to the breach of an oath, and to that of a vow; and to brand with the same mark of infamy a solemn averment which, at the time of making it, was certainly false,—and a single departure from a declared resolution which, at the time of declaring it, might possibly have been sincere. But, if they themselves are to be believed who have made the oath, and who break it, the University of Oxford, for this century and half, has been, and, at the time I am writing, is a commonwealth of perjurers.* The streets of Oxford, said the first Lord Chatham, once, "are paved with disaffection." That weakness is outgrown: but he might have added then, (if that had been the statesman's care,) and any one may add still, "and with perjury." The face of this, as of other prostitutions, varies with the time: perjurers in their youth, they become suborners of perjury in their old age.

It should seem that there was once a time, when the persons subjected to this yoke, or some one on their behalf, began to murmur: for, to quiet such murmurs, or at any rate to anticipate them, a practitioner, of a faculty now extinct, but then very much in vogue,—a physician of the soul, a *casuist*, was called in. His prescription, at the end of every one of these abridged editions of the statutes—his prescription under the title of *Epinomis seu explanatio juramenti, &c.*, stands annexed.† This casuist is kind enough to inform you, that though you have taken an oath indeed, to observe *all* these statutes—and *that* without exception, yet, in ninety-nine instances out of a hundred, it amounts to nothing. What, in those instances, you are bound to do is—not to keep your oath, but to take your choice whether you will do that or suffer—not to do what you are bid; but, if you happen to be found out (for this proviso, I take for granted, is to be supplied) to bear the penalty. For—what now do you think your sovereign seriously wishes you to do, when he forbids you to commit murder? that you should abstain from murder at all events? No, surely; but that, if you happen to be found out and convicted, you should sit quiet while the halter is fitted to your neck.

Who is this casuist, who by his superior power washes away

* "Statuimus," say these reverend legislators, "idque sub pœna perjurii," in a multitude of places.

† The title at length is *Epinomis, seu Explanatio Juramenti quod de observandis Statutis Universitatis a singulis præstari solet: quatenus scilicet, seu quousque obligare jurantes censendum est.*

the guilt from perjury, and controls the judgments of the Almighty? Is it the legislator himself? By no means: that indeed might make a difference. The sanction of an oath would then not with certainty be violated; it would only with certainty be profaned. It was a Bishop Sanderson, who, in the bosom of a Protestant church, before he was made a bishop, had set up a kind of confessional box, whither tender consciences repaired from all parts to heal their scruples.

This institution, whether it were the fruit of blindness or of a sinister policy, has answered in an admirable degree, some at least of the purposes for which it was probably designed. It has driven the consciences of the greater part of those by whom the efficient parts of government are one day to be filled, into a net, of which the clergy hold the cords. The fear and shame of every young man of sense, of spirit, and reflection, on whom these oaths are imposed, must at one time or other take the alarm. What! says he to himself, am I a perjurer? If he ask his own judgment, it condemns him. What then shall he do? Perjury, were it only for the shame of it, is no light matter: if his education have been ever so loose, he has frequently heard it condemned; if strict and virtuous, he has never heard it mentioned without abhorrence. But, when he thinks of the guilt of it, hell yawns under his feet. What then shall he do? Whither then shall he betake himself? He flies to his reverend instructors in a state of desperation. "These men are older than myself," says he; "they are more learned, they are therefore wiser: on them rests the charge of my education. My own judgment, indeed, condemns me; but my own judgment is weak and uninformed. Why may not I trust to others? See, their hands are outstretched to comfort me! Where can be the blame in listening to them? in being guided by them? in short, in surrendering my judgment into their hands? Are not they my rulers, my instructors? the very persons whom my parents have appointed to take charge of me, to check my presumption, and to inform my ignorance? What obligation am I under, nay, what liberty have I to oppose my feeble lights to theirs? Do they not stand charged with the direction of my conscience?—charged by whatsoever I ought to hold most sacred? Are they not the ministers of God's word? the depositaries of our holy religion? the very persons, to whose guidance I vowed, in the person of my godfathers and godmothers, to submit myself, under the name of my spiritual pastors and masters? And are they not able and willing to direct me? In all matters of conscience, then, let me lay down to myself the follow-

ing as inviolable rules :—not to be governed by my own reason ; not to endeavour at the presumptuous and unattainable merit of consistency ; not to consider whether a thing is right or wrong in itself, but what *they* think of it. " On all points, then, let me receive my religion at their hands : what to them is sacred, let it to me be sacred ; what to them is wickedness, let it to me be wickedness ; what to them is truth, let it to me be truth ; let me see as they see, believe as they believe, think as they think, feel as they feel, love as they love, fear as they fear, hate as they hate, esteem as they esteem, perform as they perform, subscribe as they subscribe, and swear as they swear. With them is honour, peace, and safety ; without them, is ignominy, contention, and despair." Such a course must every young man, who is brought up under the rod of a technical religion, distinct from morality, and bestrewed with doubts and dangers, take on a thousand occasions, or run mad. To whom else should he resort for counsel ?—to whom else should he repair ? To the companions of his own age ? They will laugh at him, and call him methodist : for many a one who dreads even hobgoblins alone, laughs at them in company. To their friends and relations who are advanced in life, and who live in the world ? The answer they get from them, if they are fortunate enough to get a serious one, is—that in all human establishments there are imperfections ; but that innovation is dangerous, and reformation can only come from above : that young men are apt to be hurried away by the warmth of their temper, led astray by partial views of things, of which they are unable to see the whole : that these effusions of self-sufficiency are much better repressed than given way to : that what it is not in our power to correct, it were better to submit to without notice : that prudence commends what custom authorizes—to swim quietly with the stream : that to bring matters of religion upon the carpet, is a ready way to excite either aversion or contempt : that humanity forbids the raising of scruples in the breasts of the weak,—good humour, the bringing up of topics that are austere,—good manners, topics that are disgusting : that policy forbids our offending the incurious with the display of our sagacity, the ignorant with the ostentation of our knowledge, the loose with the example of our integrity, and the powerful with the noise of our complaints : that, with regard to the point in question, oaths, like other obligations, are to be held for sacred or insignificant, according to the fashion : that perjury is no disgrace, except when it happens to be punished : and that, as a general rule, it concerns every man to know and to remember,

as he tenders his peace of mind and his hopes of fortune, that there are institutions, which though mischievous are not to be abolished, and though indefensible are not to be condemned.

A sort of tacit convention is established: "Give your soul up into my hands—I ensure it from perdition. Surely the terms, on your part, are easy enough: exertion there needs none: all that is demanded of you is—to shut your eyes, ears, lips, and to sit quiet. The topic of religion is surely forbidding enough, as well as a forbidden topic: all that you have to do then, is to think nothing about the matter; look not into, touch not the ark of the Lord, and you are safe."—ii. 260-262.

UNIVERSITY OATHS.

Veracity is one of the most important bases of human society. The due administration of justice absolutely depends upon it; whatever tends to weaken it, saps the foundations of morality, security, and happiness. The more we reflect on its importance, the more we shall be astonished that legislators have so indiscreetly multiplied the operations which tend to weaken its influence.

When the possession of the revenues, or other privileges attached to a certain condition of life, depends upon the previous performance of certain acts which are required at entering upon that condition, these privileges cannot fail to operate upon individuals as incentives to the performance of those acts: the effect produced is the same as if they were attached to such performance under the title of reward.

If, among the number of these acts, promises which are never performed are required under the sanction of an oath, these privileges or other advantages can only be regarded as rewards offered for the commission of perjury. If among the number of these acts, it be required that certain opinions which are not believed should be pretended to be believed, these advantages are neither more nor less than rewards offered for insincerity. But the sanction of an oath once contemned, is contemned at all times. Oaths may afterwards be observed, but they will not be observed because they are oaths.

In the university of Oxford, among whose members the greater number of ecclesiastical benefices are bestowed, and which even for laymen is the most fashionable place of education,—when a young man presents himself for admission, his tutor, who is generally a clergyman, and the vice-chancellor, who is also a clergyman, put into his hands a book of statutes, of which they

cause him to swear to observe every one. At the same time, it is perfectly well-known to this vice-chancellor and to this tutor, that there never has been any person who was able to observe all these statutes. It is thus that the first lesson this young man learns, and the only lesson he is sure to learn, is a lesson of perjury.

Nor is this all: his next step is to subscribe, in testimony of his belief, to a dogmatical formulary composed about two centuries ago, asserted by the Church of England to be infallibly true, and by most other churches believed to be as infallibly false. By this expedient, one class of men is excluded, while three classes are admitted. The class excluded is composed of men who, either from a sense of honour, or from conscientious motives, cannot prevail upon themselves publicly and deliberately to utter a lie. The classes admitted consist—1. Of those who literally believe these dogmas; 2. Of those who disbelieve them; 3. Of those who sign them as they would sign the Alcoran, without knowing what they sign, or what they think about it. A nearly similar practice is pursued at Cambridge; and from these two sources the clergy of the Church of England are supplied.

Socrates was accused as a corrupter of youth. What was meant by this accusation, I know not. But this I know, that to instruct the young in falsehood and perjury, is to corrupt them; and that the benefit of all the other lessons they can learn can never equal the mischief of this instruction.—ii. 210.

Talk of custom-house oaths,* when such are the university oaths! Talk of merchants, when of such is the bench of bishops! In a custom-house, men pure from perjury must surely be to be found: so at least let us hope, were it only for the credit of those who, in the case of universal perjury, would be the universal suborners. In a custom-house many, in the university of Oxford—pure from perjury no man—for ages has been,—or, where the swallowing the about-to-be-continually-violated oath continues to be, amongst other breaches of sincerity, the price exacted for admission, will ever be,—to be found.—v. 195.

JUDICIAL OATHS.

Swear not at all, says Jesus: at least in as far as to his biographer Matthew credence may in this point be ventured to be given.

* These are no w abolished, and Declarations substituted.—*Ed.*

"Swear not at all," says Jesus: and as if, unless inculcated and enforced by reasons, a precept so simple should escape from remembrance, reasons are subjoined. Professing himself a religionist of the religion of Jesus,—an obeyer of the ordinances of Jesus,—and of all the ordinances attributed to Jesus,—not seeing any ordinance more clear or precise than this, a Quaker refuses to disobey it. For this refusal it is, that, between Church and State, matters are so ordered, that, in a case which has afforded no other witness than such as are of this persuasion, justice—criminal justice at least—is deprived of all evidence: * license being thereby granted, to all such crimes as from time to time it shall happen to any man to feel himself disposed to commit (other persons out of the question) upon the bodies, or in the presence, of any number of Quakers.

In England this same religion has been adopted. Adopted? but how?—Exactly with those same reservations, with which a Bill is at its first introduction adopted in the House of Commons; viz. with liberty of making amendments:—amendments omissive, interpolative, substitutive:—amendments of all sorts, and in all cases:—and in all cases to such effect, as the convenience of that class of men, by whose convenience everything is regulated, was found to require.

In regard to some of its clauses, as where *poverty*, or *equality*, or *non-resistance* are ordained, the amendment made has been of the *omissive* kind. In the present instance, for the purpose here in question, it has been of the *interpolative* kind: an amendment for giving admission to such oaths, as, for purposes such as those above described, it should be found convenient to administer: to administer, amongst other occasions on the occasion of the delivery of judicial testimony.

What is certain is—that by Jesus, any such exception is not, by any one of his four biographers, represented as having been made.—Not made by him? and what then? It is of the number of those, which, though he did not make, he ought to have made.

Not so much as the profession of rendering justice being to be made unless the performance of this ceremony be duly accomplished, thereupon comes more complication, more law learning, more doubts, more business.

A Jew's oath, what shall it be? Must the hat be *off* or *on?* and if *on*, what shall in law be deemed and taken to be a hat? and the book, what must it be? and in what language?

* This defect has been amended by later Legislation.—*Ed.*

Jew or Christian, what is it that shall be kissed? What if, instead of the book, it be the thumb that receives the salute? what if, to a book with the Song of Solomon in it, by *astutia* or *laches* of the clerk, those of Rochester be found to have been substituted? With such an instrument could a man commit perjury?

In Westminster Hall, when a man takes an oath which is said to be administered *by* a Judge or certain Judges, the Judge or Judges—must they be there, or may they be not there?—Not many years ago the writer of this was sworn in this way to the truth of a mass of testimony before a learned Judge, who was anywhere but there. From beginning to end suppose it wilful falsehood, was any of it perjury?

The Mahometan—in his system of imposture does the ceremony find the necessary virtue? does it in the still more extravagant imposture of the Hindoo? in the religion or the no-religion of the Chinese is that magic to be found, which in case of profanation draws down, with such unerring certainty, the ever obsequious vengeance of the Church-of-England God, by whom all such magic stands prohibited in terms as plain as it is in the power of language to provide? In this or that false religion suppose this ceremony to be misperformed—in the Hindoo religion for example, in which, as exquisitely turned as if it had been in Westminster Hall, the whole mass of ceremonies is a widow's cruise of nullities?—v. 201-202.

The supposed punishment for the profanation, on whom is the infliction of it supposed to depend? On the Almighty? No; but, in the first instance at any rate, on man alone. No oath tendered, no offence is committed, on no man punishment inflicted. According to the oath-employing theory, man is the master, the Almighty the servant. In respect to the treatment to be given to the supposed liar, the Almighty is not left to his own choice. In the event in question, at the requisition of the human, the divine functionary is made to inflict an extra punishment. Exactly of a piece with the authority exercised by a chief-justice of the King's Bench over the sheriff of a county, is the authority there, by every man who has purchased it, pretended to be exercised over the Almighty. In Westminster-Hall procedure, the chief-justice is the magisterial officer; the sheriff of the county in question a ministerial officer, acting under him: a written instrument, called *a writ*, the medium of communication, through which,

to the subordinate, the command of his superordinate is signified.

In the case of the *oath*, the man by whom the oath is administered performs the part of the chief-justice; the Almighty, that of the sheriff acting under him; and the kiss given to the book performs the service of the writ.

Is it by a country attorney, dignified by the title of Master-extraordinary in Chancery—is it by this personage that the oath is administered? In this case, it is the attorney that the Almighty has for his master now; and by the shilling paid to the attorney—by this shilling it is, that the Almighty is hired.—v. 457–458.

Take two offenders: the one a parricide, by whose false testimony his innocent father has been consigned to capital punishment; the other, by whose false testimony a neighbouring householder has been wrongfully convicted of the offence of laying rubbish on the highway. Take the offence in both cases on the mere footing of false testimony, one sees how unequal is the guilt, —and how widely different the punishment, which, consistently with the principle of religion, cannot but be expected at the hands of divine justice. Take it on the footing of perjury, the guilt is precisely the same in both cases: for in both cases the ceremony is the same; and in both cases it is alike violated and profaned.

* * * * * * * * *

Will it be said, Nay: for, after and notwithstanding this ceremony, God will govern himself by his own good pleasure, as he would have done without it: though the act which the oath-taker engaged himself thus to perform be unperformed, if that act be a criminal one, God will not punish him for the omission of it: commission, not omission, is what God punishes in crimes? Be it so: God will not punish the violation of an oath, when the act engaged for by it is the commission of a crime: God would not have punished Jephthah, had he omitted to put to death his unoffending daughter, notwithstanding his eventual promise so to do. Be it so: but, this being supposed, here is an end of the efficacy, the separate and independent efficacy, of an oath.

To the purpose in question, the authority given by the oath to the inferior being over the superior, must have been understood to be absolute, or it must have amounted to nothing. Were there any exceptions or limitations? If so, the imagination is set to work to look out for the terms and grounds of such exceptions

and limitations: to inquire, for example, into the species and degree of *mischief* that in each instance might be expected to result from the violation of testimonial truth. But if *this*, then, be the ground of the supernatural punishment attached to the violation of the oath,—then the mere violation of the oath itself, independently of the mischief resulting from the falsehood, is not that ground; that is,—the effect produced by the oath, considered in and by itself, amounts to nothing.

In vain would it be to say, No; when God punishes for perjury, though he punishes for the profanation, that does not hinder but that he may punish for the false testimony in proportion to the mischievousness of the effects produced by it. Whatever reason there is for supposing him to punish for the false testimony, there is the same reason for supposing him to punish for that crime, whether the profanation be or be not coupled with it. Whatever punishment is inflicted by him on the score of the false testimony, is not inflicted by him on the score of the profanation: whatever is inflicted by him on the score of the profanation, is not inflicted by him on the score of the false testimony.

Either the ceremony causes punishment to be inflicted by the Deity, in cases where otherwise it would not have been inflicted; or it does not. In the former case, the same sort of authority is exercised by man over the Deity, as that which, in English law, is exercised over the judge by the legislator, or over the sheriff by the judge. In the latter case, the ceremony is a mere form, without any useful effect whatever.—vi. 309-310.

Attach to the ceremony, and thence to the profanation of it, but the smallest particle of punishment, and that particle inseparable; then has every man a sure recipe for binding himself, and any such other man as the influence of a moment can put into his power for this purpose,—for binding them, with a force proportioned to the quantum of this particle, to the commission of all imaginable crimes: then has man, by grant from God himself, a power over God, applicable at any time to the purpose of converting God himself into an accomplice of all those crimes.

Let this be the supposition built upon, then would Jephthah, by the amount of this inseparable particle,—then would Jephthah, had he spared his daughter, have been punished by God's power—punished, not for the taking of the rash vow, but for the breaking of it.

Then would the assassin of Henry IV. (punished, or not pun-

ished for making the attempt) have been punished, and by divine vengeance, had he refrained from making it.*

Assassination,—assassination through motives of piety, is the natural,—in case of consistency the necessary, and as history testifies, the too frequent,—fruit of the popular persuasion relative to the nature and effect of oaths.

It was in the earliest stages of society—in those stages at which the powers of the human understanding were at the weakest—that this, together with so many other articles in the list of supernatural securities, or substitutes for testimonial veracity, took their rise. Ordeals, in all their forms: trials by battle: trials without evidence (understand human evidence:) trials by supernatural, to the exclusion of human, evidence: trials by evidence secured against mendacity by supernatural means—by the ceremony of an oath.

As the powers of the human understanding gain strength, invigorated by nourishment and exercise,—the natural securities rise in value, the supernatural, understood to be what they are, drop, one after another, off the stage. First went ordeal: then went duel: after that, went, under the name of the wager of law, the ceremony of an oath in its pure state, unpropped by that support which this inefficient security receives at present from those efficient ones which are still clogged with it: by and by, its rottenness standing confessed, it will perish off the human stage: and this last of the train of supernatural powers, *ultima cœlicolûm*, will be gathered, with Astrea, into its native skies.

The lights, which at that time of day were sought for in vain from supernatural interference, are now collected and applied, by a watchful attention to the probative force of circumstantial evidence, and a skilful application of the scrutinizing force of cross-examination.—vi. 318.

What gives an oath the degree of efficacy it possesses, is, that in most points, and with most men, a declaration upon oath includes a declaration upon honour: the laws of honour enjoining as to those points the observance of an oath. The deference shown is paid in appearance to the religious ceremony: but in reality it is paid, even by the most pious religionists, much more to the moral engagement than to the religious.

It is, in truth, to the property which the ceremony of an oath

* In allusion to Ravaillac being supposed to have taken an oath to assassinate Henry IV. He took the sacrament on the day on which he committed the murder.—*Ed.*

possesses, of weakening the power of the only really efficacious securities, that what influence it has is confined. In the character of a security for veracity, take it by itself, it is powerless, and may plainly be seen to be so.

Applied to judicial testimony, if there be an appearance of its exercising a salutary influence, it is because this supposed power acts in conjunction with two real and efficient ones: the power of the political sanction, and the power of the moral or popular sanction. When, to preserve a man from mendacity,—in addition to the fear of supernatural punishment for the profanation of the ceremony, a man has the fear of fine, imprisonment, pillory, and so forth, on the one hand; the fear of infamy, the contempt and hatred of all that know him, on the other; it is no wonder that it should appear powerful. Strip it of these its accompaniments—deprive it of these its supports—its impotence appears immediately.—vi. 312.

VOID OATHS.

When, in the case of this or that application of it, pure mischief is beyond dispute seen to follow from the observance of it, the oath, it is said, is in this case *void:* absolutely null and void. In form and appearance it is an oath; but, not having the binding force of an oath, it has not the substance. This being the case, the conclusion is—that, upon the true and genuine instrument, whatsoever mischiefs may be the result of the use made of any such spurious instrument, ought not to be charged.

The oath is void!—The expression is familiar enough, but what meaning is there at the bottom of it? The oath, this particular oath, is void; *i. e.* is not really binding upon the Almighty, whom it undertakes to bind? Is this what is meant? If so, the truth of this observation must be admitted to be above dispute: for by what human instrument, under this or any other name, can omnipotence be bound? But, in regard to mischievous effects, be they what they may, it leaves the case where it found it.

By *man*—by the men upon whose agency it may come to have a bearing,—by them will it or will it not be considered—by them, let its effects have been in ever so high a degree mischievous, has it not been considered—as binding upon them? The oath that *Jephthah* took, was it or was it not by Jephthah considered as binding upon Jephthah? The oath that Herod took, was it or was it not by Herod considered as binding upon Herod? The

oath which George took, was it or was it not considered by George as binding upon George?* Such are the questions that call for answer, when, whether in speaking of it, any such words as *null* or *void* be employed or not employed in speaking of it, its effects, good and bad together, experienced and probable, come to be weighed.

"The oath," says the casuist,—"the oath which Herod took —was a *void* oath:"—What, in the mouth of the casuist, is the meaning of this phrase? Either this or nothing, viz. that, in the situation of that tyrant, the casuist, had it happened to him to have taken such an oath, would not have considered himself as bound by it. May be so: but the *charger*,—the fatal charger,—was it the less cruelly stained by innocent blood?

"Taken in the sense in which George is supposed, or pretended to have understood it, the oath which he took would," says the casuist, "have been a *void* oath." Be it so. But four millions of his own subjects, in the breast of each of whom was enclosed a soul not less precious than his own, a conscience not less entitled to consideration than his own—four millions of his own countrymen, with their posterity to the end of time—were they the less peremptorily treated in the character of an everlastingly degraded caste, composed of everlastingly dangerous adversaries? Were the hands of the sovereign less inexorably employed, in sowing the seeds of rebellion broad cast, and sharpening the axe for heads, more than could find room in many a thousand *chargers?*

Besides the irrelevancy of it, as above shown—at the bottom of every observation, for the expression of which any such adjective as *null* or *void*, any such substantive as *nullity*, is employed, an inconsistency, an irremoveable inconsistency will be found. From the ceremony, and that alone, is the binding force, whatever it be, that is supposed to attach on the case, derived; from the ceremony and nothing else:—and the ceremony, beneficial in any degree—pernicious in any degree in its application—the ceremony, which, except the application, is all there is in the case, is it not in every case the same?—v. 194–195.

JURYMEN'S OATHS.

No jury is ever impannelled, but their entrance into their ephemeral office is prefaced by what is called their oath. Each man

* In allusion to George III. founding his opposition to Catholic Emancipation on his Coronation Oath.—*Ed.*

bearing his part in this ceremony, promises that the verdict in which he joins shall be according to the evidence, *i. e.* according to his own conception of the probative force of the evidence. What is the consequence? That, so far as in relation to this probative force (*i. e.* as to that one of the two sides of the cause, to which the greatest quantity of probative force applies) there is any ultimate difference of opinion, some proportion out of the twelve, any number from one to eleven inclusive, has committed perjury. Lest the consummation of this perjury should be delayed for an inconvenient length of time, a species of torture has, by the care of those judges by whom the foundation of this species of judicature was laid, been provided for the purpose : a species of torture composed of hunger, cold, and darkness. Hence judicature by jury is a sort of game of *brag*, in which the stake is won by the boldest and the most obstinate : they or he remain unperjured—all the others perjured. Of all the men of law that ever sat upon the official bench, by what one could this carefully-manufactured and perpetually-exemplified perjury have been unknown?—by what one of them was it ever spoken of as matter of regret?—vi. 314.

COMPULSORY BELIEF.

In the field of theology (all history joins in proving it) the attachment manifested by men to an opinion, and in particular by men in power, is strenuous and inflexible, in the direct proportion of its absurdity. The effect is the result of the conjoint influence of a variety of causes.

1. With the zealous and sincere ; the more palpably and flagrantly absurd the proposition—the greater the reluctance on the part of a man's understanding to the adoption of it—the greater and more powerful the effort necessary to overcome that reluctance,—the greater is the difficulty, and thence the apparent merit, of the sacrifice. If the sacrifice of the body is an oblation acceptable to the more than canine appetite of a malevolent and jealous deity,—the sacrifice of the nobler part, the mind, the understanding itself, must be a still more grateful sacrifice.

2. Insincere, or even sincere ; the greater the absurdity of the proposition, the greater the impossibility of obtaining in favour of it that complete and imperturbable serenity of mind which accompanies the conviction impressed upon the mind by real and familiar truths : the greater, consequently, the irritation produced by that presumptive evidence of the falsity of the proposition, the

amount of which is swelled by every instance of disbelief on the part of other minds. Every such instance of dissent constitutes a sort of circumstantial presumptive evidence of the erroneousness of the proposition thus adhered to. Every such piece of evidence forms an obstacle to the formation, entertainment, or continuance of the persuasion which a man has it so much at heart to entertain (if sincere,) or (if insincere) to appear to entertain, without prejudice to his reputation for sincerity in the circle in which he moves.

3. Sincere, or insincere; the more palpable the absurdity, the greater is the triumph, the more entire the mastery, obtained over those minds from whom an assent, real or apparent, can be procured for it. *Swallow this poison*, is among the commands which impostors have been found impudent enough to issue, and fanatics mad enough to obey. Such (has the triumphant impostor said to the astonished strangers whom he meant to impress with the irresistible plenitude of his power)—such are the fruits of faith, when it is sincere. *Swallow this nonsense*, is the criterion of obedience imposed by each domineering dogmatist upon the proselytes, whose opinions, or whose language, the force of hope or fear has placed under his command. The more gross the nonsense, the more prostrate is the obedience on one part, the more absolute the power on the other.—vii. 109.

EXCULPATIVE PERJURY.

In England, scarcely any crime is so common as that of exculpative perjury;—scarcely any so rare as that of criminative perjury:—especially in the case of the most highly punished species of crimes. The reason is, that in the former case, humanity, *i. e.* sympathy towards the individual over whose head the rod of punishment hangs suspended, is an interest that acts in opposition to the guardian interests:—in the latter case, its force is exerted on the other side.

Among professional depredators, the propensity to exculpative perjury is strengthened by the concurrence of other interests. Not only each gang of specially connected depredators, but the whole class, and, as it were, community of depredators taken together, form, as it were, a particular community of itself, which, like other particular communities, lawful and unlawful, honourable and dishonourable, such as that of divines, lawyers, merchants, &c., has its *esprit de corps*, its corporate affections, and

other interests. Being a community within a community, it has accordingly a popular sanction, a public opinion of its own, distinct from, and in this instance opposed to, the public opinion of the great community, the public at large. This, therefore, is one of the cases in which the force of the popular sanction is divided against itself, and in which that division which is likely to be strongest is on the side opposed to justice.—vi. 155.

THE SCIENCE OF JUDICIAL EVIDENCE.

In the map of science, the department of judicial evidence remains to this hour a perfect blank. Power has hitherto kept it in a state of wilderness: reason has never visited it.

In the few broken hints which, in the form of principles, may be picked up here and there in the books of practice, little more relevant and useful information is to be found, than would be obtainable by natural philosophy from the logicians of the schools. —vi. 209.

AFFIDAVIT EVIDENCE.

When a course of guilt rendered necessary by ill-constructed laws, and become inveterate by habit, is become so familiar to the eye as no longer to be productive of any perceptible sensation; men, though in the theatre of justice accustomed to talk morality, as a poor player in the like character might do upon the stage,—such men will, like the poor player, sometimes forget their part. The men I have in view shall not be named by me; they are particular men, and there are more than one of them: I was never set against them by any the least cause of enmity; enmity, had there ever been any, would long since have been extinguished in the grave; they would scarcely, were they alive, regard the observation so much as a token, or even as a cause of displeasure: but I will not, on this occasion, refuse to mankind the benefit of this my testimony. Oftentimes have I observed them, while affidavits have been reading, looking about to their brethren on the bench, or across the court to their quondam brethren at the bar, with sympathetic nods, and winks, and smiles, noting perjury, and treating it as a good joke. Such, while suitors are men, and while judges are men, must be the consequences of affidavit evidence. These were old men—I was

then a young one: youth, where there is any virtue, is the season for it: virtue, at a distance from temptation, may be practised without difficulty. Whatever be the cause, well do I remember that no such jokes, especially when followed by such marks of relish, have ever met my eyes or ears, without exciting a mixed sensation of disgust and melancholy.

Are judges insensible to the impropriety of this species of evidence? No: they are not insensible of it. How often have I not heard them speaking with displeasure of the task imposed upon them, or attempted to be imposed upon them, of trying a cause by affidavits! Why then submit to it at all? Because, in certain cases, like so many other unpleasant tasks, (unpleasant, at least, in proportion to a man's love of justice,) it stands imposed upon them by the inviolable law of usage.

When the decision is by a judge without a jury, could not the examination be carried on without a jury likewise, at the same time carried on in other respects as if there were a jury to hear it, and decide upon it? Oh no: not for the world. Was ever proposition so extravagant? Littleton, with Coke upon his back, would rise out of his grave to protest against it.

Locke, in his Essay, speaks of a student in the art of dancing, who could not practise unless an old trunk he had been used to see in the rooms, were in the particular place he had been used to see it in. An English judge would not know how to lend an ear to the examination of a witness, unless he saw a dozen tradesmen sitting in the box in which on these occasions he had been used to see them.—vi. 464-465.

CUMBROUS FORMALITIES FOR AUTHENTICATING DEEDS.

The supposition upon which judges and legislators have proceeded, in the fixation of the modes of authentication which they have prescribed, has been that of a universal and constant disposition on the part of all suitors to commit forgery: or, if that supposition has not in every instance been actually entertained, it is the only one on which the modes prescribed are capable of being justified—the only one by which the price paid, in the shape of delay, vexation, and expense, for the supposed advantage in the shape of satisfaction in respect of trustworthiness, would not be recognised to be excessive and oppressive. If among a thousand cases in which the legal *effect* of a piece of written evidence is in dispute, there be not so much as one in

which the *authenticity* of it is a matter of real doubt on the part of the suitor against whom it is produced,—it is only in the one case where it is matter of real doubt, that the price paid for authentication in the shape of delay, vexation, and expense, or all together, need be so considerable as to be worth counting. Under the existing system, there is scarce a cause in which it is not considerable, and in many a cause it would be found to be seriously oppressive.

Thus it happens, that for one grain of mischief produced, or that would or could be produced, by fraud in the shape of *forgery*, a thousand, ten thousand, are produced by fraud in the shape of *chicane:* of chicane, produced partly by the enmity of suitors, partly by the rapacity of their agents, abetted by that of the subordinate officers of justice: both passions protected and encouraged and engendered by prejudice and indifference on the part of judges and legislators. Familiarized with the spectacle of continual misery, generated according to rule and custom, and therefore on their parts without blame,—the reduction of the mischief to its minimum, the reduction of it so much as within any narrower bounds, never presents itself to them as worth regarding. Like so many other processes which go on as it were of themselves, according to preëstablished and never-considered rules, the authentication of evidence is considered as a sort of mechanical operation, the pathological effects of which have no claim upon them for so much as a thought. Whence all this composure? For the observance of the established rules, the man in office is responsible: for the propriety of these rules—for their subservience to the ends of justice, he is not responsible.—vii. 184-185.

FORGERY OF CIRCUMSTANTIAL EVIDENCE.

As well in the case of real evidence as in the case of written evidence, forgery is susceptible of one main distinction—into *fabricative* and *obliterative*. The case where, in the employment of expedients of this kind, the endeavour of the criminal is simply to remove the imputation from himself, without seeking to fasten it on anybody else, is as common as the other case is rare. Whatever be the crime, a main object of the endeavour of the criminal is of course to expunge, as effectually as possible, all traces of the commission of it. The hands, the garments of the murderer, have they received a stain from the blood of the deceased? The

most obvious reflection suggests the removing the stain from everything from which it can be removed, and the destroying or hiding anything from which it cannot be removed. To superinduce upon any object an appearance, the tendency of which shall be to disprove the commission of the crime,—whether by disproving the existence of the criminal act or some criminative circumstance, or by proving the existence of some justificative, or extenuative, or exemptive, circumstance ;—an artifice of this tendency would suppose an ulterior degree of refinement, and would come under the denomination of *fabricative* forgery of real evidence.

As it is only through the medium of physical facts that psychological facts can be brought to view, it is, consequently, through the medium of physical facts alone, that any deceptitious representation of psychological facts can be conveyed. Physical facts alone, and not psychological facts, are the only one of the two sorts of facts upon and in respect of which forgery can, properly speaking, be committed—to which the operations indicated by the term forgery can bear any direct and immediate application.

As to physical facts ; although, among the several modifications of which real evidence of the *evanescent* kind is susceptible —evidence consisting of motions, sounds, colours, smells, tastes, and (if the word may be used) *touches*,—there is not perhaps a single article that has not, at one time or other, been taken for the subject of that sort of deceptitious operation which, applied to other subjects, has received the name of *forgery ;* yet it is among the modifications of *permanent* real evidence that we are to look for that modification of forgery which is most in use, most readily apprehended, and most apt to present itself under that name.

The beautiful history of the patriarch Joseph will afford us one exemplification of forgery respecting real evidence. Preparatory to the affectionate forgiveness he meditated to extend to his brethren, his plan required that an alarm should be raised in their guilty bosoms—an apprehension of being punished, not indeed for the barbarity of which he had formerly been the victim, but for a supposed offence of recent date, of which they were altogether innocent. In this view it was, that, into one of the sacks that had been filled with the corn which they had been buying, he caused a cup to be introduced, which, not having bought it, they had never meant to take. Here then we have an example of forgery of real evidence of theft—forgery of real evidence of the permanent kind—forgery of evidence presented by the per-

manent situation of a certain material object, a certain real body, principal object and subject-matter of the supposed theft, the imputation of which it was intended thus to fix upon them, though for a time only, and for a generous and friendly purpose.

Another example may be afforded by the modern case of Captain Donnellan.* The smell afforded by the laurel-water, the poison supposed to have been employed by him as the instrument of death,—this important phenomenon, susceptible of permanence in respect of the substance itself and its odorous power, evanescent when considered in respect of the sensations of which, on any given occasion it might have been productive,—was, at any rate, (so long as the phial continued impregnated with it,) a lot of real evidence—a lot of evidence indicative, at once, of the physical act by which the poison was applied to the organs of the patient; of the intention, the murderous intention, in pursuance of which these acts were performed; and of the criminal consciousness with which that intention was accompanied. Conscious of all these facts, as well as of the punishment annexed by law to such crimes, Donnellan, on observing how the phial had become the subject of observation, took it up, and, with the apparent view of doing away the instructive smell, poured water into it, and rinsed it out. The forgery thus actually committed was of the kind that has been distinguished by the name of *obliterative*. Suppose now, that, instead of simply clearing the phial of the existing smell, it had been his plan, for further security, to superinduce another—the smell, for instance, of some highly-scented medicine, such as would have been suitable to the patient's case,—*fabricative* forgery would thus have been added to *obliterative*.

In the case where guilt, guilt on the part of the forger, really exists,—the inculpative fact, of which the act in question operates as evidence, is a psychological fact—the existence of culpable consciousness—consciousness that the act, whereby the effect is intended to be produced, is of the number of those which stand proscribed by one at least of the two guardian sanctions, the political and the moral, if not by both.

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No system of established procedure is yet known that does not afford instances—instances in greater numbers than an eye of sensibility can contemplate without concern and apprehension—

* See a more particular account of his case in the next article. The extremely nice chain of presumptions from which the belief of his guilt was inferred, made the justice of the conviction a subject of much controversy, and several pamphlets were written on the subject.—*Ed.*

where individuals, really innocent, have sunk under a load of imputation heaped upon them by fallacious circumstantial evidence. Suppose an article of this description, pregnant with false inferences,—an article exhibiting appearances susceptible of permanence :—the dagger employed by a murderer, conveyed into the pocket of an innocent man ; the garment of an innocent man stained, by design or accident, with blood from the body of a man who has been murdered. Suppose the innocent man detected in his endeavours to rid himself of the dagger, to wash away the blood : the dagger, the blood, fallacious as they are, are, notwithstanding, evidence : these endeavours, innocent as they are, will accordingly be, in appearance at any rate, and in a certain sense in reality, forgery of real evidence.

The case of the unfortunate Calas affords an exemplification of more than one of the incidents by which the conclusiveness of an inculpative presumption may be proved. A son of his had received a violent death from his own hands : the father was brought to trial on a charge of murdering the son. As far as the confusion of mind into which he was plunged permitted, he had obliterated or changed some of the appearances about the body of the deceased, and other circumjacent bodies : here was forgery of real evidence. On his examination, he denied some of the facts by which the non-naturality of the death was indicated : in this mode, as in the former, he concealed—not indeed the fatal act itself, the act by which the process of strangulation was effected (for in that he had neither part nor privity,)—but some of the evidentiary facts by which it was indicated : here was clandestinity. To what end all these aberrations from the line of truth ?—to cover guilt ?—No ; for there was none anywhere. The object was to save the reputation of his departed child, and thereby the reputation of the family, from the ignominy which, had the direct truth been known, would (he was but too well assured) be stamped upon it by a most mischievous and endemial prejudice.—vii. 15-17.

EVIDENCE OF CRIME FROM PREPARATIONS TO COMMIT IT.

When the act projected is of a criminal nature, or where, on any other account, the discovery of the design threatens to be followed either by the frustration of it, or by any other inconvenience, either to the agent in question, or to any other person or persons whose welfare is regarded by him with an eye of sym-

pathy, the natural state of things is, that the preparations should be endeavoured to be concealed. Understand, the preparations for bringing about the event which is particularly, and for its own sake, endeavoured to be brought about. But in this main and direct design are involved, by accident, a various and almost indeterminate multitude of incidental and collateral ones: 1. Preparations for giving birth to productive or facilitating causes of all kinds and degrees of propinquity or remoteness; for removing obstructions of all kinds from all quarters, and, among others, for obviating suspicion of the design itself; 2. Preparations, as it were, of the second order, for preventing discovery or suspicion of the preparations of the first order, viz. of those which are pointed most immediately to the accomplishment of the principal design; 3. To these preparations of the second order, imagination will easily add preparations of the third and fourth order, and so on; for it is evident, that to this chain of preparations—to the chain of eventual or intended causes capable of being thus spun out of the stores of wayward industry—there can be no certain limit.

The measures thus taken for concealment or illusion—for involving facts in darkness, or covering them with false colours—will sometimes appear in the form of *discourse*, oral or written; sometimes in the shape of *deportment*,—physical acts at large. Whatever a man does, he does either by his own hands,—by his own immediate operative powers, or by the hands of others. When he gives motion to the hands of others, it will generally be by words. So, if the hands or the lips of others be prevented from raising up obstructions to his designs: and, among the persons thus wrought upon—the persons prevented from becoming or continuing to act in the character of opponents, or converted into coadjutors—may be the intended sufferer himself.

On March 30th, 1781, at the assizes at Warwick, Captain Donnellan was convicted of murder, committed by poisoning Sir Theodosius Boughton, in whose estates he had an interest in right of his wife. This case will be found pregnant with a variety of instructive illustrations. The determination was formed, that, in some way or other, the death of the young man should take place. To shut the door against suspicion, a notion was to be propagated, that his state of health was desperate; that death—speedy death—was certain; that his imprudence was continually heaping up causes upon causes.* The poison employed was distilled laurel-

* Trial, pp. 18, 20.

water. The plant was to be found, of course, in the garden; and the murderer, not to have poison to buy, had provided himself with a still for the fabrication of it. He practised distillation frequently; and the room in which he operated was kept by him locked up.* The young man had a trifling complaint for which he was taking medicine: the contents of one of the phials were to be got rid of, and the poison substituted. The phials, as they came in, used to be placed by him in an inner room, which he had been in the habit of locking up. He happened once to forget to take his medicine. "Why" (says Donnellan) "don't you set it in your outer room? you would not then be so apt to forget it." —The fatal advice was taken: and thus the necessary opportunity was *prepared*.

Preparations capable of a specific description are frequently and properly made the subject of a separate prohibition;—converted into distinct offences.

Where the connexion between any such preparatory act and its correspondent principal act is looked upon as sufficiently intimate—where the existence of the former is looked upon as sufficiently *conclusive* with regard to the existence of the latter—the vigilance of the legislator has not uncommonly exercised itself in laying hold of the preparatory act, and converting it, by his prohibition and punishment, into a separate offence; instead of taking the chance of the judge being able to treat it upon the footing of an evidentiary act, with reference to the corresponding principal act, and so bringing it within the punishment already attached to such principal act. Forgery, coining, but, above all, smuggling, afford so many instances of this line of legislative practice.—vii. 19-20.

SCIENTIFIC EVIDENCE.

In the case of Le Brun, a domestic servant, erroneously convicted of the murder of his mistress, Madame Mazel, at Paris, by a sentence of the Lieutenant-criminel, dated 18th January 1690, mention is made of five sorts of professional persons to whom the denomination of *experts* is applied, and of whose evidence the substance is reported. Locksmiths, to explain the nature of a master-key, known to have been in his possession, and its relation to other keys belonging to the same locks. Cutlers, to say whether there was any relation between a knife found upon the

* Trial, p. 41.

person of the defendant, and another knife which appeared to have been made use of in his committing the murder, but had been found in another place. Peruke-makers, to say whether a few hairs that had been found in the clenched hand of the deceased, might have been the defendant's, and plucked from his head. Washerwomen, to make a comparison between the shirts and neckcloths of the defendant, and a bloody shirt and neckcloth that appeared to have belonged to the murderer, and to have been stained with blood in the course of the struggle. Rope-makers, to say whether there was any resemblance between some cords that had been found in the possession of the defendant, and a strange cord which, it was thought, might have been made use of, or provided for the purpose of the murder. All these *experts* are mentioned as having been nominated by the Lieutenant-criminel, the judge.—vi. 214.

THE RULE THAT "IT IS HARD FOR A MAN TO BE BOUND TO CRIMINATE HIMSELF."

Hard it is upon a man, it must be confessed, to be obliged to do anything that he does not like. That he should not much like to do what is meant by his criminating himself, is natural enough; for what it leads to, is, his being punished. What is no less hard upon him, is, that he should be punished: but did it ever yet occur to a man to propose a general abolition of all punishment, with this hardship for a reason for it? Whatever hardship there is in a man's being punished, that, and no more, is there in his thus being made to criminate himself: with this difference, that when he is punished,—punished he is by the very supposition; whereas, when he is thus made to criminate himself, although punishment may ensue, and probably enough will ensue, yet it may also happen that it does not.

What, then, is the hardship of a man's being thus made to criminate himself? The same as that of his being punished: the same in kind but inferior in degree: inferior, in as far as in the chance of an evil there is less hardship than in the certainty of it. Suppose, in both cases, conviction to be the result: does it matter to a man, would he give a pin to choose, whether it is out of his own mouth that the evidence is to come, or out of another's?

To this, to which, in compliance with inveterate and vulgar prejudice, I have given the name of the old woman's reason, I might, with much more propriety, give the name of the lawyer's reason. When a child has hurt itself, and a chirurgical operation

is deemed necessary for its cure, it may be that here and there an old woman may be found weak enough to exclaim, Oh, the poor dear child! how it will hurt the poor dear child! how *hard* it will be upon the poor dear child! and so on; no, it sha'n't be doctored. It would be too much to say that such old women do not exist; but sure enough they would not, in any very considerable number, be very easy to be found.

But the lawyer, in disposing of the fate of those who, if they were in any degree dear to him, would not be dealt with by him as they are, has never—let us not say any *other*,—at any rate employs scarcely ever any *better* style of reasoning. The reasons most plenty with him, the only reasons that are not rare, are *technical* reasons. The reasons that with him are choice and rare, the reasons brought out only now and then are these old women's reasons: reasons consisting in the indicating, out of a multitude of reasons standing on each side, some one only on one side.

Nor yet is all this plea of tenderness,—this double-distilled and treble-refined sentimentality, anything better than a pretence. From his own mouth you will not receive the evidence of the culprit against him; but in his own hand, or from the mouth of another, you receive it without scruple: so that at bottom, all this sentimentality resolves itself into neither more nor less than a predilection—a confirmed and most extensive predilection, for bad evidence: for evidence, the badness of which you yourselves proclaim, and ground arguments and conclusions upon in a thousand cases.

What every man knows, and what even yourselves, in spite of all your science, cannot be ignorant of, is,—that, of all men, the man himself is the last man who would willingly speak falsely to his own prejudice; and that, therefore, against every man, his own is the safest, the most satisfactory of all evidence: and it is of this best and most trustworthy of all possible evidence, that your pretended tenderness scruples not to deprive the interests of truth and justice!

You know of such or such a paper:—tell us where it may be found. A request thus simple, your tenderness shudders at the thoughts of putting to a man: his answer might lead to the execution of that justice, which you are looking out for pretences to defeat. This request, you abhor the thoughts of putting to him: but what you scruple not to do (and why should you scruple to do it?) is, to despatch your emissaries in the dead of night to his house—to that house which you call his castle, to break it open, and seize the documents by force.—vii. 452.

An observation that appears to have been made on this subject is, that when a man has been convicted of a crime, it would be an unpleasant thing to him to speak of it; and thence it is that a man, whose testimony, if admitted, will be sure to be delusive, (for that is the supposition,) is to be admitted to give this delusive testimony, rather than that any questions should be put to him concerning a fact on which perjury without detection would be impossible. But, if its being unpleasant to a man is a reason for not asking him a question, *à fortiori* it ought to be a reason for not punishing him; for how unpleasant soever it may be to a man to say, I have been whipped, pilloried, or transported, the operation of whipping, pillorying, or transporting, should, one would think, be still more so.

In no possible case can the unpleasant circumstance in question, the punishment, (if it is to be called one,) be surer of not falling upon one who is innocent, than in the present; for if he to whom the question is thus put, whether he has been convicted of such or such an offence, never was convicted of it,—how it should ever happen to him to forswear himself, and answer in the affirmative, unless he takes a pleasure in forswearing himself to his own prejudice, is scarcely to be conceived. How well disposed soever a man may be to be unjust to others, there seems to be no great danger of his being disposed to do injustice to himself.—vii. 410.

Prosecution for robbery: John Stiles examined in relation to it, in the character of an extraneous witness. A question is put, the effect of which, were he to answer it, might be to subject him to conviction in respect of another robbery, attended with murder, in which he bore a share. On the ground of public utility and common sense, is there any reason why the collateral advantage thus proffered by fortune to justice should be foregone? Refusing to compass the execution of justice by this means, by what fairer or better means can you ever hope to compass it?

The punishment he will incur, if any, will be a distinct punishment, for a distinct offence; an offence which, at the institution of the suit, was perhaps never thought of.

Be it so: and should this happen, where will be the mischief? wherein consists the grievance? That a crime, which, but for the accident, might perhaps have remained unpunished, comes, by means of this accident, to be punished. Of the penal law in question, nothing being known, but that it is a penal law, is it

thereby known to be a bad one? and to such a degree a bad one, that the execution of it is a grievance? Is the state of the law then such, that a law taken at random is more likely to be a bad one than a good one? a nuisance than a security? Or is a law the less likely to be good, the more likely to be bad, because it is by this accident, rather than any other, that the transgression of it happens to be brought to light?—vii. 466.

ON THE RULE THAT A WIFE IS NOT BOUND TO TESTIFY AGAINST HER HUSBAND.

The film of prejudice once removed, a very loose system of morality, or rather (to speak plainly) a system of gross immorality, will be seen to be at the bottom of these exemptive rules. The very crime which it punishes in one man—punishes even with death—it affords its protection to in another. It converts, or seeks to convert, the house of every man, into a nursery of unpunishable crimes. The same age of barbarism and superstition, the same age of relaxed morality, which gave birth to the institution of *asylums*, gave birth (there seems reason to think) to this privilege, which gives to each man a safe accomplice in his bosom. The mischievousness of the domestic asylum goes, however, far beyond that of the asylum commonly so called. The church, churchyard, or monastery, whatever it was, did not afford to the criminal anything like a complete exemption from all punishment: it was itself a punishment: it was banishment from his family: it included imprisonment, or a degree of confinement so close as to be scarce distinguishable from it: it placed him in a state of penury, humiliation, and dependence.

A rule like this, protects, encourages, inculcates fraud. For falsehood, positive falsehood, is but one modification of fraud: concealment, a sort of negative falsehood, is another: I mean, concealment of any facts, of which, for the protection of their rights, individuals or the public have a right to be informed. The concealment which is authorized by the law, it may be said, ceases to be fraud. No; that it does not: I mean, in this case. A concealment which is authorized by the *substantive* branch of the law, cannot be fraudulent: the authorization does away the fraud: what is authorized is legalized: criminality and legality are repugnant and incompatible. But the law cannot, without authorizing fraud, authorize by its *adjective* branch, the doing of that which, by its substantive branch, it has constituted a crime.

By the punishment annexed to the act by the substantive branch of the law, the law has acknowledged and proclaimed its mischievousness: if the act be not mischievous, the legislator has no warrant for marking it out for punishment. But if the act be mischievous, on what ground, with what consistency, does it in any instance seek to exempt it from punishment, as if it were innocent?—exempt it in consideration of a fact purely irrelevant—a fact by which the mischievousness of it is not so much as pretended to be diminished? An article of adjective law which is at variance with the substantive law, is itself a fraud. The substantive branch of the law declares, undertakes, engages, for the benefit of all parties interested, that all persons offending so and so shall be punished so and so. The judicial authority, which, by a law of the adjective kind, of its own making, takes upon itself to exempt a man from such punishment, on a ground by which his case is not varied in point of guilt, violates that engagement. Fraudulent in itself,—so far as it encourages others to pursue that plan of concealment by which the engagement is violated, it is the cause of fraud in others. By aggregating the act to the class of crimes, and rendering it punishable as such, it declares it to be a mischievous act, and to such a degree so, as to be a crime. By authorizing an individual to conceal it, in a case in which it is not so much as pretended that its mischievousness is in the smallest degree less than in other cases, it at once protects and encourages two different acts, of the mischievousness and criminality of which it shows itself sufficiently sensible on other occasions; the principal crime, and that concealment of it, which, when the act so concealed is criminal, is itself a crime.

It debases and degrades the matrimonial union; converting into a sink of corruption, what ought to be a source of purity. It defiles the marriage-contract itself, by tacking to it in secret a license to commit crimes.

I say in secret; for the probability is, that an institution so repugnant to moral sentiments is not generally known, and, on that account, is not productive of all the mischief, of which, if known universally, it would be productive. No care being taken to enable men to possess themselves of that knowledge, on which their security, in every branch of it, is in a state of continual dependence,—the degree of information which they actually have of it, depends upon its natural aptitude for being guessed at. To the knowledge of what, on each head, *is* law, they have no other clue than such conception as they are led to form to themselves of what it *ought to be*.

Oh! but think what must be the suffering of my wife, if compelled by her testimony to bring destruction on my head, by disclosing my crimes!—Think? answers the legislator: yes, indeed, I think of it; and, in thinking of it, what I think of besides, is, what *you* ought to think of it. Think of it as part of the punishment which awaits you, in case of your plunging into the paths of guilt. The more forcible the impression it makes upon you, the more effectually it answers its intended purpose. Would you wish to save yourself from it? it depends altogether upon yourself: preserve your innocence.

To the legislators of antiquity, the married state was an object of favour: they regarded it as a security for good behaviour: a wife and children were considered as being (what doubtless they are in their own nature) so many pledges. Such was the policy of the higher antiquity. The policy of feudal barbarism, of the ages which gave birth to this immoral rule, is to convert that sacred condition into a nursery of crime.

The reason now given was not, I suspect, the original one. Drawn from the principle of utility, though from the principle of utility imperfectly applied, it savours of a late and polished age. The reason that presents itself as more likely to have been the original one, is the grimgibber, nonsensical reason,—that of the identity of the two persons thus connected. Baron and Femme are one person in law. On questions relative to the two matrimonial conditions, this quibble is the fountain of all reasoning.

Among lawyers, among divines, among all candidates setting up for power in a rude age, working by fraud opposed to force, scrambling for whatever could be picked up of the veneration and submission of the herd of mankind,—there has been a sort of instinctive predilection for absurdity in its absurdest shape. Paradox, as far as it could be forced down, has always been preferred by them to simple truth. He who is astonished, is half subdued. Each absurdity you get people to swallow, prepares them for a greater. And another advantage is, the same figure of rhetoric which commands the admiration and obedience of the subject class, helps the memory of the domineering class: it is a sort of *memoria technica*.

All these parodoxes, all these dull witticisms, have this in common,—that, on taking them to pieces, you find wrapped up, in a covering of ingenuity, some foolish or knavish, and in either case pernicious, lie. It is by them that men are trained up in the degrading habit of taking absurdity for reason, nonsense for sense. It is by the swallowing of such potions, that the mind of man is

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rendered feeble and rickety in the morning of its days. To burn them all, without exception, in one common bonfire, would be a triumph to reason, and a blessing to mankind.—vii. 484-486.

THE FOX-HUNTER'S REASON FOR GIVING PRISONERS A CHANCE OF ESCAPE.

This consists in introducing upon the carpet of legal procedure the idea of *fairness*, in the sense in which the word is used by sportsmen. The fox is to have a fair chance for his life: he must have (so close is the analogy) what is called *law*,—leave to run a certain length of way for the express purpose of giving him a chance for escape. While under pursuit, he must not be shot: it would be as *unfair* as convicting him of burglary on a hen-roost, in five minutes' time, in a court of conscience.

In the sporting code, these laws are rational, being obviously conducive to the professed end. Amusement is that end: a certain quantity of delay is essential to it: despatch, a degree of despatch reducing the quantity of delay below the allowed minimum, would be fatal to it.

In the case of the fox, there is frequently an additional reason for fair play. By foul play, the source of the amusement might be exhausted: the breed of that useful animal might be destroyed, or reduced too low: the outlawry, so long ago fatal to wolves, might extend itself to foxes.

In the mouth of the lawyer, this reason, were the nature of it seen to be what it is, would be consistent and in character. Every villain let loose one term, that he may bring custom the next, is a sort of a bag-fox, nursed by the common hunt at Westminster. The policy so dear to sportsmen, so dear to rat-catchers, cannot be supposed entirely unknown to lawyers. To different persons, both a fox and a criminal have their use: the use of a fox is to be hunted; the use of a criminal is to be tried.

But inasmuch as, in the mouth of the lawyer, it would be telling tales out of school,—from such lips this reason must not be let out without disguise. If let out at all, it must be let drop in the form of a loose hint, so rough and obscure, that some country gentleman or other, who has a sympathy for foxes, may catch it up, and taking it for his own, fight it up with that zeal with which genius naturally bestirs itself in support of its own inventions.—vii. 454.

THE RULES EXCLUDING THE TESTIMONY OF CRIMINALS.

If the legislator had his choice of witnesses upon every occasion, and witnesses of all sorts in his pocket, he would do well not to produce any, upon any occasion, but such over whose conduct the tutelary motives exercised despotic sway: in a word, to admit no other men for witnesses than perfect men. But perfect men do not exist: and if the earth were covered with them, delinquents would not send for them to be witnesses to their delinquency. In such a state of things, then, the legislator has this option, and no other: to open the door to all witnesses, or to give license to all crimes. For all purposes, he must take men as he finds them: and, for the purpose of testimony, he must take such men as happen to have been in the way to see, or to say they have been in the way to see, what, had it depended upon the actors, would have been seen by nobody.—vii. 413.

THE RULE REJECTING THE TESTIMONY OF ATHEISTS.

An atheist is a bad witness; but how to know him from another? It must be from his own account of himself, if from anything; for atheism is not written on a man's forehead. Which, then, is the true atheist?—the man who says he is not an atheist, and is one? or the man who says he is an atheist, and is not so? This pretended atheist (it should seem) must be considered as the true one, for every practical purpose. Those who speak of atheists as lying under the disabilities in question, must, if they mean anything, mean such persons, and all such persons, as exhibit the only marks of atheism which the nature of the case can by any possibility afford. If this be true, here is a receipt, and that an infallible one, whereby any man that pleases may render his testimony unreceivable. The conspirators in one of the assassination plots against Henry the Fourth of France, or his predecessor, (I forget which,) made use of the sacrament as an instrument for binding one another to mutual fidelity. Had they brooded over their plots under the shadow of the English common law, they might have found in atheism, or pretended atheism, a security of rather a different nature, it must be confessed, but applicable to the same use, and of rather superior efficacy. A man might have taken ever so many sacraments, and be never the worse witness: but one good declaration of atheism,

made in proper form and in proper company, will be enough to make him as bad as can be desired. When a man has been received to serve the king, if he would serve with safety, he must produce a certificate of orthodoxy, as demonstrated by taking the sacrament according to the forms of the English church. When a man proposes to join in murdering the king, if he would do the business in safety as against his associates, he must make them furnish him with a certificate of their atheism.—vii. 422.

ATROCITY OF A CHARGE MADE A REASON FOR DISBELIEVING IT.

Of a man who brings forward this observation, the first question to be asked is, what he means by *atrocity?* But this is that sort of question which the sort of writer in question takes care not to put to himself; his readers would not thank him for it. Nothing is more troublesome to a man, than to be obliged to know what he means: no error so pernicious, that he would not rather adopt and give currency to, than load himself with so much trouble. To explain or to inquire what it is a man means, is metaphysics:—light is an object of hatred to all owls and to all thieves; definitions, under the name of metaphysics, to all rhetoricians. "I hate metaphysics," exclaims Edmund Burke, somewhere: it was not without cause.

What then is, on this occasion, meant by *atrocity?*—the atrocity of the offence—no, not of the *offence;* that would not be sentimental enough:—of the *crime.* The word *crime,* being incurably indistinct and ambiguous, is the word to be employed upon all rhetorical occasions.

Does it mean the *mischievousness* of the offence? If it does, the proposition is in a great degree erroneous. Of all offences, by far the most mischievous are those which owe their birth, or tend to give birth, to civil war: treason, rebellion, sedition, and the like.—Suppose a civil war:—subject of dispute, title to the throne: question on which the title turns, legitimacy. The nation is equally divided: to-day, one half are traitors; to-morrow the other half. Whichever half is, for the time being, on the unsuccessful side, and composed thereby of seditionists, rebels, traitors, it is on that side that you find the most disinterested, the most generous, the most heroical of mankind. If, then, by atrocity we mean mischievousness, the proposition, that an offence is the more improbable the more atrocious it is, is not true.

By *atrocity* is not unfrequently, perhaps most frequently, meant, neither more nor less than *odiousness;* meaning of course by odious, that which is so (no matter for what reason, no matter whether with or without reason) to the individual by whom the appellation is employed: in a word, that which is the object of his antipathy. To one set of men, the man who differs from them in some peculiarly tender point bearing relation to religion, is the most atrocious character; to another, or to the same, the man who has been drawn into some devious path by the impulse of the sexual appetite. The existence of the Christian, the Theist, the Atheist, I have thus heard successively denied by their respective abominators. In printed books I have observed doubts, next in force to denial, expressed with relation to the existence of those non-conformists who, in company with the wearers of linsey-woolsey, are consigned to destruction in the second edition of the Mosaic law. All passions are cunning; antipathy not less so than any other. On the part of the antipathist, the profession of incredulity is but a pretence and a disguise, to enable him with more decency to give vent to his rage, and with more effect to point the rage of others against the odious object. If the existence of these monsters is so incredible, the practical consequence should be, not to be so ready to devote to perdition this or that individual, under the notion of his being one of them. But the antipathist knows better than to be thus cheated of his prey. The existence of the monster is to be incredible, or next to incredible, for the purpose of rendering him proportionably odious. The odiousness, being the medium of proof for the demonstration of the improbability, is assumed of course; and, forasmuch as an attempt to prove supposes the necessity of proof, and assumption the non-necessity of proof, assumption of a fact is still more persuasive than the strongest proof of it. To screw up the odium against a man to the highest pitch, you begin with declaring his existence—the existence of so odious a character—next to impossible: having thus pointed against him the rage of the judge, you make use of that rage for disposing the judge to believe him guilty. While Louis XIV. was persecuting the Huguenots, it was an established maxim, a fiction of French law, that there were no such persons in existence.

By *atrocity* may, again, be meant *cruelty*—cruelty displayed in the commission of the offence. This sense is, of all, the most literal and proper sense. But, if the import given to the word *atrocity* is thus confined, the application of the maxim, the description of offences to which it is applicable, is proportionably

confined. It is almost confined to personal injuries, homicide included. If wilful destruction by fire or water be included, it will be either because homicide, or the imminent danger of that mischief, and upon a large scale, are involved—or because, in its application to property, the amount of the mischief or danger is so indefinitely extensive.—vii. 115-116.

THE VARIOUS FORMS IN WHICH CRIMINALS PROVIDE EVIDENCE AGAINST THEMSELVES.

Preparations, attempts, declarations of intention, threats: physical and involuntary symptoms of fear, betrayed by the confessionalist upon an occasion specified: the care taken by him to conceal the obnoxious event, the criminal act—or his person while engaged in it; to keep out of the way all persons whose presence might have been dangerous in the character of percipient witnesses of it: the language held by him, before the act and after it, in the view of quieting suspicion, or preventing it from coming into existence: the exertions employed by him upon a variety of objects, of the class of *things*, in the view of preventing them from assuming appearances capable of testifying against him in the character of real evidence: the exertions employed by him in the view of giving to any of those objects delusive appearances, tending to bring to view the obnoxious event as being the work of mere accident, or of some other agent: the labour employed by him upon the apprehended witnesses, whose observations, in the character of percipient witnesses, he could not prevent from coming into existence: the exertions made by him to keep them out of the way by direct threats or promises, by deceitful representations, or by downright force—or, to induce them, in the event of their appearance, to suppress the facts indicative of his guilt, or even substitute to them pretended facts indicative of his innocence: the exertions made by him for the purpose of operating in the like manner upon persons who had begun, or were expected by him, to act against him, in the character of prosecutors: the exertions made by him for withdrawing his person and property out of the reach of justice, and in the meantime for concealing himself: the motives by which he was stimulated to the commission of the offence: the length of time during which these motives had been operating on his mind, and the turn which this disposition of mind had, on different occasions, given to his conduct: the language which it had occurred

to him to hold to different persons on different occasions, whose questions or observations he had to encounter in relation to the principal facts of the offence, or any other facts whose connexion with it might, to his apprehension, be discovered or suspected: the silence he ventured or was forced to maintain on some occasions; the false or evasive answers it occurred to him to give on other occasions; with the self-contradictions which, on some of those occasions, he fell into in consequence: the memoranda he had made of some of the facts connected, in one way or other, with the criminal enterprise; the letters he had written to or received from associates; and his alarm under the apprehension that some of these documents had fallen into the adversary's hands: his fears under the apprehension that among his consultations with his confederates there were some that might have been overheard by persons, through the evidence of whose discourse they would not fail to be conveyed to the notice of the adversary: his fears that among his associates there were some who either already had been, or soon would be, unfaithful to their trust.—vii. 30-31.

RANK AND WEALTH AS EVIDENCE IN CRIMINAL CHARGES.

The presumptive evidence of habitual opulence afforded by office, visible property, education, habitual expenditure, will, in general, be much more incontestable than any which can be afforded of moral character by general expressions.

Singly, (much more if in conjunction,) a certain degree of opulence and rank in life are enough to render scarcely credible, on any evidence, a fact for which, in another station, in respect of rank and opulence, slight evidence would be sufficient to gain credence. In any of the civilized nations of Europe, what evidence would be sufficient to convict a prince of the blood, or a minister of state, of having picked a man's pocket of a dirty handkerchief, in a street, or in going into a playhouse?

One particular case there is, in which the force of the presumption derived from this source is not quite so great as, on general considerations, it might appear. This is the case of thefts committed on articles possessing a value of affection; and, in particular, thefts committed by amateurs on fancy articles—rare books, rare pictures, rare plants, shells, minerals, rare anything. A man who might be trusted, with safety, with a heap of untold gold, might not be capable of resisting the temptation presented

by some choice desideratum which, if to be sold, might be to be purchased for a few shillings.

The warning afforded by this observation is, happily, of no great use in practice. Thefts of special concupiscence are the offences of the rich: thefts of general concupiscence are the offences of the poor. Thefts of the former description are apt to experience a degree of indulgence in which the principle of sympathy and antipathy will naturally find much to reprobate, but to which the principle of utility is by no means equally severe. The alarm in this case is extremely narrow: few but amateurs have anything to fear from the thefts of amateurs; and the mischief which the negligence of an amateur has to fear from the concupiscence of another, is confined to simple theft: to the more formidable mischiefs of robbery, house-breaking, and murder, the apprehension does not extend. Hence it is, that thefts of this description, in the few instances in which they are detected, experience, commonly, a degree of indulgence such as would not be extended to those which have the plea of *necessity*, or, at least, of *indigence*, for their excuse. Hence, too, it is, that the indulgence extended to them is not productive of any such general mischief to society, as would be the result of the like indulgence, if extended with equal frequency to promiscuous thefts.

In some cases, the question in regard to opulence and rank in life enters into the essence of the cause: the probability and improbability of the main fact in dispute is in a manner governed by them; and in these cases, whether character be or be not expressly held up to view, it is in a manner impossible to it not to act, with more or less force, upon the mind of the judge.

Take the famous case of the Comte de Morangiès, in Linguet's *Plaidoyers*. The count—having occasion to borrow money to the amount of 300,000 livres—with evident, though not unusual imprudence, trusts an obscure female money-broker, and through her means a pretended money-lender, with bills of his, payable to order, to that amount and upwards. Of this large sum no more than 1200 livres were really delivered. The pretended lender proves the delivery of the whole by the testimony of three pretended eye-witnesses. The whole cause of the unfortunate man of quality rests upon circumstantial evidence: upon improbability, partly of the physical, partly of the psychological kind. Station, in respect of rank and opulence, on both sides, but more especially (in respect of opulence) on the part of the pretended lender, became a necessary subject of inquiry. Traced out from the time of the pretended acquisition of this large fortune to the time

of the disposition thus pretended to have been made of it, the whole history of her life and conversation concurred in representing the fact of her having possessed it, or anything like it, as scarce credible upon any testimony—absolutely incredible upon the strength of the testimony produced.—vii. 62.

JUDGES RECOMMENDING CRIMINALS NOT TO PLEAD GUILTY.

Where it happens to a prisoner to answer in the affirmative—in appropriate language, to *plead guilty*—if he insists on it, the general understanding seems to be that he has a right to have such his plea recorded: in which case there is a necessary end of the trial, and the verdict follows of course.

In practice, it is grown into a sort of fashion, when a prisoner has returned this answer, for the judge to endeavour to persuade him to withdraw it, and substitute the opposite plea, the plea of not guilty, in its place. The wicked man, repenting of his wickedness, offers what atonement is in his power: the judge, the chosen minister of righteousness, bids him repent of his repentance, and in place of the truth, substitute a barefaced lie. Such is the morality, such the holiness, of an English judge.—vi. 473.

THE APHORISM THAT "THE JUDGE SHOULD BE COUNSEL FOR THE PRISONER."

Of a rational and honest aphorism on this subject, what would be the purport and effect? That the judge ought to be counsel for all parties, and that in all sorts of causes. Not in criminal causes alone, and such criminal causes alone in which the defendant is in the condition of a prisoner,—and in those causes on the side of the defendant alone; but alike for all parties, and in all sorts of causes. Where is the cause in which any the slightest departure from the rule of impartiality is, in the eye of justice and reason, anything less than criminal on the part of the judge? Not that a mere negative impartiality is sufficient: a positive, an active impartiality, must be added to it: to be equally active in his endeavours to search out the truth on both sides,—that is the true impartiality, the only true and proper sort of impartiality, befitting the station of the judge.

Thus much is true, indeed,—that, next to the positive and

negative impartiality conjoined, comes negative impartiality alone: next to his taking equal pains to search out the truth on both sides, is his not giving himself any concern to search it out on either side.

The psychological cause of this adage—is it worth looking for? In the currency given to it, humanity, or rather childish weakness, may possibly, in here and there an instance, have had a share;—hypocrisy, selfishness covering itself in the mask of virtue, is in every instance a more probable cause. It is among the artifices employed by lawyercraft to reconcile the public mind to the sale of indulgences. Decision in favour of the defendant on a ground foreign to the merits—decision grounded on a quirk or quibble—is among the instruments by which this species of traffic has ever been carried on.

In the individual instance in which the quibble is not only applied to this purpose, but discovered by the judge, no immediate profit, perhaps, results to anybody: either there is no counsel, or if there be, the counsel, without the quibble, and for the mere chance of his finding out that or some other quibble, has received his fee.

But the practice itself is, in its own nature, shocking to common sense and common honesty: the public mind, had it not been duped and gulled, could never have contemplated it without the indignation and scorn it merited. A sophism, therefore, was to be invented for that purpose—a lying spirit was to be sent forth to deceive the people; and this was the imp that offered itself.

The traffic would not have been borne in any case, if the credit of the commodity had not been kept up in all cases: and nothing could contribute more powerfully to keep up the credit of the sophism, than the distributing it through the pure (and to appearance unpaid) hands of the judge. The policy is no secret to any species of impostor: like the husbandman, he knows when to scatter as well as how to gather in: the quack, that he may sell the more of his pills at one time, distributes them gratis at another.

Without strict search, assertion is not to be ventured: but, from principle, I should not expect to find that the adage had ever been employed to any other than a bad purpose. How should it? Good wine needs no bush: putting a pertinent question, bringing to light the innocence of the innocent, needs no apologies, no adages.

Nothing can be more artful than the sophism—nothing more

guarded, more impregnable. Who shall contest the truth of it? Fallacious in the highest degree, no one can say that it is false. It is like one of the two sides of a correct account. So far as it goes, it is all pure justice: stop there and sink the other side, it is the quintessence of injustice. But so sure as the account thus drawn up by lawyercraft is produced, so sure is one of the sides sunk.

The English judge—would he dare to put to a guilty defendant so much as a single question that might throw light upon his guilt? Not he indeed. The sophism nursed up so carefully by his predecessors for the benefit of the common cause—the sophism here in question, is not of the number of those which a judge can bring forward or put aside as caprice may dictate: firm as a rock, his power would be shaken by it, were he to venture to attack it.

The policy has still deeper root: it is for this cause that cruel punishments are to be multiplied; and in particular that the punishment of death (a punishment not good in any case) is, as opportunity serves, to be extended to all cases. The more barbarous the punishment, the less disposed is the public mind to scrutinize into the pretences by which here and there a victim is preserved from it.

For this cause amongst so many others, the punishment of death has ever been, and (so long as lawyercraft reigns) will ever continue to be, a favourite policy with the English lawyer.

A connexion, says Cicero, may be traced between all the virtues: a connexion still more obvious may be traced between the several branches of injustice. Injustice to the defendant's side, injustice by excess of punishment,—and injustice to the prosecutor's side, injustice operating by quibbles,—are consanguineous vices—vices that act in partnership, and play into one another's hands.—vi. 350-351.

SILENCE AS EVIDENCE OF GUILT.

Supposing him [the accused] not guilty, such silence cannot but be detrimental to him: supposing him guilty, it cannot but be advantageous to him; that is to say, supposing the judge were to abstain from drawing the inference which no individual viewing the matter in the same point of view ever fails to draw, on the ground of the known principles of human nature and common sense.

To answer one way or other, cannot but be in his power. No

question whatever to which a man, any man whatsoever, is not able to make an intelligible answer of some sort. *Quest.* What do you know about this business? *Ans.* So and so: or, I know nothing about the matter. Whatever be the question, whosoever be the individual to whom it is propounded, an answer to one effect or the other may in every case be given by him. The answer may be true or false: if false, the case belongs to the head next considered.

The party is exposed to suspicion—to a strong and serious suspicion of having been really guilty of the offence of which he stands accused. Followed or not followed by punishment,—the persuasion entertained respecting the truth of the accusation—entertained by every man to whose cognizance the particulars of the examination present themselves, will be the same. The part that will be in general acted on such occasion by a man who feels himself guilty, being made known to all mankind by reason grounded on experience,—so sure as that part is acted by any man, so sure will he be looked upon as guilty by all who know of it: and, being so looked upon, the disrepute attendant upon the offence—the punishment attached to it by the popular, or say the moral sanction—the forfeiture of a correspondent portion of esteem, and consequent good will, attaches upon him of course.

Supposing him not guilty, every fact and circumstance that he knows, will contribute (if known) to manifest his innocence: for, that he has not done the act charged upon him, is certain by the supposition. Between facts that are all true, there cannot be any incompatibility, any inconsistency: if, therefore, there be a single true fact with which the fact charged upon him is inconsistent, that fact cannot but be false. Speaking, therefore, from memory, and not from invention,—by every fact he discloses he gives himself an additional chance of manifesting the falsity of the imputation cast upon him. Forbearing to put in for this advantage, he makes manifest by as plain a token as it is possible for a man to display—as plain as he could by any the most direct confession that were to confine itself to general terms,—that the situation he is in, is of that sort that does not suffer a man to put in for that advantage: the situation of him whose memory holds up to him the picture of his own guilt.

Such are the grounds of the inference, spread out at full length. But where is the individual, male or female, high or low, rich or poor, who, being of ripe years and of a sound mind, is not in the habit of drawing the same inference with equal correctness and security, though by a shorter process, and without the trouble of

clothing it in words? Where is the master or mistress of a family, who seeing reason to suspect a child or servant of any forbidden act, does not, for the confirmation or removal of such suspicion, employ this species of evidence, and with more confidence than any other?—*Silence is tantamount to confession*, is accordingly an observation, which, whether it may happen or not to have been yet received in any collection of proverbs, is repeated and acted upon with not less confidence and certainty, with not less safety, than the most familiar of the sayings which have been thus distinguished.

Could the existence of a set of human beings have been conceived, endowed with any particle of the attribute of rationality, in whom a conceit of any kind should to such a degree have extinguished the lights of reason and common sense, as to have disposed them to shut the door of justice against this surest, safest, and most satisfactory species of evidence? Yes: two have already been indicated:—English lawyers,—and a people whose boast it is, with eyes hermetically closed, to be led by a hook put into their noses by the interested hands of English lawyers.—vii. 25.

DRAMATIC INTEREST OF CRIMINAL TRIALS.

Take up an English trial (I speak of trial at common law:) if the subject be interesting, the very evidence is amusing: it is in the form of ordinary conversation; it is in the dramatic form; it is the drama of real life.

Take up a history of an old French lawsuit, the evidence is absolutely unreadable: it is the same dull formulary in every case. Of the witness you see nothing—you see nothing but the lawyer: what you see plainly is, that nothing could have really passed exactly as it is there represented to have passed: what you cannot hope to see, is, how anything really passed. Accordingly, in the *Causes Celèbrès*, you know nothing of the evidence: all that you see—all that you could bear to see, is the account (faithful or unfaithful) given of it by the advocates, together with the observations which they ground on it.—vi. 441.

CHARACTERISTICS OF ENGLISH PENAL LAW.

In English criminal law, two opposite, but alike baneful, principles,—one of thoughtless cruelty, the other of equally thought-

less laxity,—are constantly at work together: the one infusing its poison into legislation, the other into judicature—the one inimical to all enlightened policy, the other to all substantial justice.

By the one,—at the suggestion of some individual member of the legislature, engrossed by the view of some narrow object, without so much as a thought about any that are on one side of it,—penal laws are heaped upon penal laws, in a progression the ultimate tendency of which is to extend to all cases a mode of punishment too radically incongruous to be fit to be employed in any. Between delinquency and punishment, between temptation and check, between impelling causes and restraining causes, between delinquency and delinquency, between mischief and mischief,—on these and the like occasions, not the faintest idea of proportion seems ever to have made its way into those seats of public sapience. In this state of things, if a mark which is never aimed at should not unfrequently be missed, the wonder will not be great.

The other principle is employed, in the hands of the judge, to frustrate the laws altogether, by preventing them from being executed: it is the principle which will be so often spoken of in this work,* under the name of the principle of nullification; and its instruments are quirks, or (as they are generally called) decisions on grounds foreign to the merits.

Each, as if by consent, with blind and wayward industry, tampers in his own way with the cords that bind society together: the legislator in straining them, the judge in fretting and enfeebling them: and the farther the advance made in the system of indiscriminating tension, the stronger the passion, and the more plausible the pretence, for equally indiscriminating and still more extensive relaxation. The two functionaries, playing a seemingly adverse part, each in pursuit of his own narrow and sinister interest, play in fact (with or without thinking of it) into each other's hands. The one obtains the praise of wisdom, by the sacrifice of all enlarged and consistent policy—the other the praise of humanity and science, and at no greater expense than the sacrifice of the interests of truth and justice and public security.

Partly to this desire of ill-earned popularity, partly to the habit of blind adherence to blindly established rules, may be ascribed the maxim which declares, that when the proceedings of one trial have not been sufficient to warrant the conviction of a prisoner,

* The Rationale of Evidence.

there shall never be another. If neither truth nor justice were of any value, there would be no objection to this rule: but, supposing either to be worth caring for, the mischievouness, as well as absurdity of it, will be equally incontestable.

Completeness of the mass of evidence is a point no less essential than correctness. It is accordingly an object at which, by cross-examination and a variety of other means, English procedure never ceases to aim; except in so far as its endeavours are stopped and diverted by some blind and sinister prejudice. In cases not penal (except as excepted,—for in English jurisprudence no general proposition is true till after an indeterminable list of exceptions has been taken out of it)—in cases not penal, to whichsoever side the result of one trial has been favourable, the door is open to another. In criminal cases, no: this must not be. If a guilty man has in this way been let loose, there is no harm done: so he might have been by a thousand other causes, none of them having, or so much as professing to have, any regard or relation to the merits. If a man not guilty has been convicted,—no, not then neither: he is to be saved or not, as he can find favour: the credit of saving him is to be taken out of the hands of open and discerning justice, and made a perquisite of, for the benefit of secret yet ostentatious mercy. As if every praise bestowed on mercy were not purloined from justice; as if the very distinction between justice and mercy had anything but blindness and weakness for its source; as if such mercy were anything better than tyranny, with hypocrisy for a covering to it.

The ways in which justice may be, and every day is, knocked on the head by the instrumentality of this rule, are infinite. Papers for the moment put out of the way—witnesses locked up, kept in a state of drunkenness, sent away on fools' errands, or misinformed as to the appointed day or hour—and so forth.

Two sorts of occasions alone shall here be brought to view in any detail; partly on account of the frequency of their occurrence, partly on account of the facility, as well as the imperative propriety of obviating them. One is the case of *character* evidence—an article to be hereinafter spoken of in the character of a species of circumstantial evidence. * * * * A good character is given to a guilty defendant by accomplices, whose character, being inscrutable, must be taken for good. The defendant is a thief; and the receivers, who are his customers, come with a panegyric on his honesty. What risk is encountered by such evidence? what door is left open for the detection of it—especially at the only period when detection would come in time? To both

questions, the answer is in the negative. To the purpose of the conviction of the guilty principal,—after the verdict by which he stands acquitted, the clearest proof of the worthlessness of the eulogist, the accomplice would come too late. As to punishment for this species of mendacious testimony, it is, at any rate, without example. To convict a man of mendacity, for an opinion (however false) delivered in general terms,—to warrant on the part of the judge a persuasion adequate to that purpose,—is not in itself an easy task.

The other case is that of *alibi* evidence (as above.) Here, the evidence being in its nature so much the more conclusive, the mischievousness of the factitious bar opposed to the proof of its falsity (where it happens to be false) is the more serious and the more palpable. Conviction, as for the mendacity, would here indeed, in the nature of the case, be as easy and comparatively certain, (understand always in case of prosecution,) as in the other it is difficult and precarious. But, for the vexation and expense of prosecuting for this excretitious crime, who is there that shall find adequate motives? Neither public spirit, nor even vengeance, are in general found equal to such a task. A prosecution of this sort is, if not altogether without example, extremely rare ; while, unhappily, nothing is more common than the offence.

Meantime, although punishment as for the perjury were actually to take place, the conviction of the criminal in whose favour it was uttered, and by whom or in whose behalf it was suborned, would be never the nearer. Had the crime been a non-penal one, and the matter in dispute some petty right of property, yes : but upon a criminal, the laws are to go unexecuted, rather than that, to the two superfluous inquiries that have been seen, a necessary one should require to be superadded.

In regard to remedies,—two, equally obvious, present themselves ; each alike applicable to both these species of circumstantial evidence.

One is,—in case of the acquittal of a prisoner on the ground of such evidence, the rendering the acquittal provisional :—reversible on subsequent proof of falsehood on the part of the evidence. The other is, the requiring (according to a practice already established in some cases) timely notice to be given of the nature of the evidence so intended to be produced, and of the persons of whose testimony it is to consist. As to the combination of these two securities, or the option to be made between them, these are among the topics which belong not to *evidence*, but to *procedure*.—vi. 378-379.

COMMON INFORMERS.

An informer is one who, at the invitation of the law, lends his hand to the administration of justice. It follows not, that because a man is ready for a certain price to give true evidence, he is ready to give false evidence for the same price: it follows not, any more than that because a man is ready, in the capacity of a judge, for a certain salary, to engage to administer justice, and do his part towards the due execution of the laws, he is ready, for the same salary, to engage to practise depredation under the name of justice. It follows not, any more than that because for a given price a man is ready to engage to contribute to the defence of his country against the invasion of a foreign enemy, therefore for the same price he is ready to engage to contribute to the destruction of his country in the service of the enemy. It follows not, that because by swearing truly he expects to gain £10, therefore he will depose falsely for that purpose; nor that, because, at the expense of the same sum expended in costs of prosecution, he seeks the pleasure of revenge at the expense of any person who, no matter on what account, has become the object of his ill-will,—therefore, to gain the end of the prosecution, he will, in the character of witness for the prosecutor, deliver mendacious criminative evidence.

In various ages and countries, mischief in vast quantity has been operated by men in the character of informers. But the testimony by which in these instances it has been operated—the testimony which has served as the instrument of the mischief, has been, not mendacious, but veracious testimony; the fault has lain, not in the informers, but in the laws.—vii. 591-592.

PREJUDICES AGAINST INFORMERS.

To the rendering the service of the laws in this instance an honourable service, one condition is indeed necessary, which is, that the laws themselves be not such as it would be dishonourable to make. The expedient therefore will not serve where the law itself is but the tool of despotism. It is only on a free soil that it can manifest its full virtue. It consists not with the blind and dastardly policy of sleeping laws. It is incompatible with that almost equally shameful negligence which suffers the body of the laws to remain clogged and enfeebled with a heap of obsolete and confessedly useless matter, which, so far from wishing to see

brought into activity, no man would wish, nor, but for sluggishness and panic terrors, endure, to see exist. Honour can scarcely be expected to lend its sanction to the support of establishments in which abuse is neither avoided in practice, nor so much as disclaimed in principle. What if, instead of being disclaimed, it be openly professed? Honour will with difficulty be brought to lend its sanction to revenue, where the treasure collected in enormous heaps from the labour of all, is styled the property of one, and converted in such large proportion into the wages of corruption, or pampered idleness, or unnecessary service. In France, where law is, in the language of plain truth, and not in the jargon of fiction, the expression of the general will, and where profusion, if it exist, will be the work of honest oversight, not of knavish system, honour may be given with as little scruple to the occasional as to the constant ministers of justice.—iv. 404.

PREJUDICES AGAINST SECRET INFORMATION.

Secrecy indeed, if in all cases equally and absolutely impenetrable, would be a cloak to calumny. What then is to be done? While no indications of that injury appear, keep the veil inviolate: where any such indications betray themselves, remove it.

Under such conditions where can be the harm of secrecy? The moment it can be productive of any, there is an end to it. The moment it can be of any use to anybody that the informer should be visible, he is brought to light.

So long as the information ~~is~~ not chargeable with calumny, to what purpose should the author of it be known? If it be true, instead of harm it has done good: if false, then indeed there has been harm done; but unless it be not only false, but groundless, even here there is no injury.

To judge whether a charge, being false, is also groundless, is it necessary to know, in the first instance, who gave the information? By no means: before you have any concern with the informer, you must look in the first place to the evidence. Witnesses, as such, are known at any rate: if in that character a man calumniates, in that character you may punish him: a veil which covered him in no other character than that of informer is not worth removing, for it has proved no screen to him. If witnesses are altogether wanting, then indeed, but then only, is it material to look for the informer.

Dragging a man thus to light who wishes to be concealed, can

be of no use but for one or other of two purposes: to subject him to punishment, under the name of punishment: or to subject him to the burden of making satisfaction, which with respect to him is the same thing. If for either purpose discovery be deemed necessary, discovery will be made; if not for either, what use in making it? But the mischief of making it is what we have already seen.

Great outcries have been made in different countries against secret accusations, and not without great reason: why? Partly because the veil was made so thick as to serve as a cloak to calumny, partly because the laws thus executed were the work and the instruments of despotism. Were the calumny ever so conspicuous, a single person had it in his power to screen it: it might oftentimes be his interest so to do, and in doing so he was irresponsible. Where the law itself is odious, every thing and every person occupied in its service, shares the odium. How many pure and excellent articles in the apparatus of the law have lost their character in this way! and how many bad and unserviceable ones have, by this very unserviceableness, become popular! See the Chapter on Juries. Few popular sentiments that have not their root in reason: still fewer that have not spread beyond the reason out of which they grew.

By whom has the clamour against secrecy been raised? Sometimes perhaps by men who, without being delinquents, feared the being treated as such by this means; but by delinquents always, and of course. Had it however been confined to delinquents, it would not on that account have been always undeserving of censure. Under a tyranny, honest men are delinquents: and to do what can be done towards weakening the power of the laws, is the interest of honest men. If indeed the veil of secrecy is tied down with such tightness as to serve as a cloak to calumny, whatever outcry has been raised against it, has been just in every point of view: in that case all men, delinquents or not, are interested in its being removed.—iv. 399.

REASONS FOR A PUBLIC PROSECUTOR.

In one class of instances it [the Law of England] compels those who inform to prosecute:* in another, by refusing to hear the

* In the list of private offences raised to the rank of public ones, such as, by the punishment annexed to them, it has comprised under the name of *felonies*: theft, defraudment, robbery, homicide, for example. Penal justice is by this

testimony of him who prosecutes, it drives from its service the best species of informer, and with him the voluntary prosecutor, though upon the chance of finding such a servant, no official one being in these instances provided, depends the whole force and efficacy of the law.

Whence all this discouragement, when encouragement was so much wanted? Not so much from any erroneous views, as from mere oversight and negligence. It has been the natural, and in a manner necessary effect of the omitting to establish a public prosecutor: a function, under every other system perhaps but the English, provided for with an attention little less regular than that bestowed upon the office of Judge. No such provision having been made, individuals must be trepanned into the service of justice, or justice, instead of being so often left undone, would scarce ever be done. In this service, as in others, if you have no regular force on foot, you must put up with volunteers or pressed men, and get them as you can. What in the military service is regarded as abuse, is the regular and sole practice in this branch of the legal. You lie in wait for a man, till his peace has received a wound from injury; you catch him intoxicated with passion, and in that state you enlist him into a service, of which, in addition to the burden, he is to bear all the expense, whether he has funds for it, or whether he has none. You single out the distressed: and, as if unmerited suffering had not been sufficiently severe, you load them and squeeze them, not only for the benefit of the public at large, but to help to pamper a swarm of titled idlers, who, without so much as the pretence of stirring a finger, are gorged with wealth, which in France would be deemed excessive if given in recompense for the greatest service. Abuse is thus interwoven with abuse: and each gives shade and protection to the other. Out of extortion and peculation grow inaccessible justice and paralytic laws.—iv. 402–403.

means a kind of trap in which honest men are caught, in their pursuit of malefactors. The injurer is ruined by the sentence, the party injured by the expense of purchasing it. Were prudence and knowledge to prevail over passion and ignorance, the law would in these cases, as in so many others, be a dead letter. What scanty measure of efficacy is possessed by the main body of the laws, depends in no small degree on the ignorance in which the people are kept with respect to the abuses of all sorts which compose the system of procedure.

If the offence happens not to have been raised to the rank of felony, though in its nature and mischief not in the smallest degree different from those that are, (as is the case with various sorts of thefts and frauds,) the obligation to prosecute does not extend to it.

DIALOGUE ON THE QUASHING OF THE CONVICTIONS OF JUSTICES OF PEACE.

To make one instance serve as a sample for others by hundreds and by thousands, let us turn to the practice in regard to *convictions:* by which word, are presented to the eye of a lawyer, convictions pronounced by justices of the peace acting out of sessions, for delinquencies referred to their cognizance by particular acts of parliament.

Trying the cause under the forms or no-forms, of natural procedure, of pure and universal justice, the magistrate pronounces the defendant guilty : and, to ground the further proceedings, signs a record or memorandum, certifying the existence of the decision so pronounced. At the instance of the convict, the court of King's Bench, without so much as pretending to know anything about the facts, *quash* the conviction, liberate the defendant, set at nought the statute.

Non-Lawyer.—Liberate the delinquent, and without evidence, after he has been convicted, and by lawful authority, upon evidence? Pray, on what ground is this done?

Lawyer.—On what ground? Because the magistrate had not set forth the evidence.

Non-Lawyer.—Why should he have set forth the evidence? Had the legislature ordered him to set forth the evidence?

Lawyer.—No : it was not necessary.

Non-Lawyer.—What, then? had anybody else ordered him?

Lawyer.—No : it was not necessary.

Non-Lawyer.—What! not even you? you, who quash his decision for not having set forth the evidence? By what ingenuity was he to have discovered this to be your will and pleasure?

Lawyer.—We never meant that he should discover any such thing. Can you be so weak as to suppose we did? Are we such simpletons, do you suppose, that, when it is really our wish a man should do a thing which he would have no motive to do unless he knew it to be our pleasure,—that, in such a case, we should really omit to make him know that it was our pleasure? Did you ever know an old woman silly to such a degree of silliness? No, sir : our wish, and our determination, was to quash the decision at any rate. To quash a just decision, or to do anything else that ought not to be done, a pretence, you know (or you ought to know) we must always have. As to what the pretence is, it matters very little. If the evidence had been set forth, we

should have found another. When we have a mind to get rid of a decision, do you think we are ever at a loss?

Non-Lawyer.—I must confess, I do not very well see how that misfortune should ever happen to you. But, as to the quashing of the conviction, pray what may have been the use of it?

Lawyer.—Use of it? Abundance of uses.

1. In the first place, this was making so much business. Down comes the money—quash goes the conviction, like a snail under our feet.

2. In the next place, we throw cold water on a bad precedent. The natural system is the rival and mortal enemy of our system: we abhor it: we do what we can to crush it: by its encroachment it robs us; by its justice it puts us to shame.

The Turks have a prophecy that some day or other the Christians will drive them out of Europe. We have something between a hobgoblin dream and a prophecy, that one of these days the natural system will drive ours out of Westminster Hall. Our wish is to stave off the fatal day as long as possible.

By thus quashing, we turn the arts of the enemy against himself: he lets off a clause, to rob us of our business; and out of that very clause we make more business.

3. In the third place . . . .

Non-Lawyer.—Oh, a truce! a truce! I see very well—any man who will not shut his eyes may see with half an eye—how well you understand your business. Only one question more:—Is it a rule with you, pray, to quash every conviction that is brought to you to quash?

Lawyer.—No: that would not be good policy.

1. In the first place, if this were the case, sooner or later the legislator might find us out, and grow angry.

2. In the next place, it is not at all necessary; every alternate one does just as well: we do not stand counting; there would be no use in it: but that proportion, or thereabouts: the nearer to it the better, if there be any difference.

Non-Lawyer.—But, if every conviction were to be quashed without exception, would not this crush the designs of the enemy more effectually? Would it not humble him still more, display the weakness of the natural system, and cure the people of having recourse to it?

Lawyer.—Possibly, in some degree: but that is not worth thinking about. Not to insist on the danger, of which you have a glimpse already,—if in this way we served a distant end, we should disserve the immediate one. If men did not see somewhat

of a chance of having their convictions held good, there would be none defended : all that business would be lost.

Non-Lawyer.—Oh yes, I see, I see : your world is like the philosopher's : nothing without its sufficient reason. But the legislature, all this while, what have they said to all this ?

Lawyer.—Said ? Nothing at all. Do what we will to them, they never say anything to us ; they never have been used to it.

Non-Lawyer.—So then you have plenty of business in this line : a rare trade, this quashing trade !

Lawyer.—No ; no great things after all : the rogues have almost grown too cunning for us. Rob us of it, to be sure, they durst not ; but, little by little, they have found out a way of stealing it from us.

Non-Lawyer.—Steal business from the law? Parliament strip lawyers of their business ? Oh, terrible ! this is the very worst of larceny : this is *contra pacem* with a vengeance. Sad usage indeed ! But pray, how do they manage it ?

Lawyer.—They provide a *form*, a skeleton form : and then, say they, every conviction that is according to that form is good. The form is a skeleton form with blanks in it, such as are in Burn's Justice : the justice has nothing to do but to fill up the blanks : the business is so easy, a viper might as soon bite a hole in a file, as any of us find a flaw in it. Now what do you say to this ?

Non-Lawyer.—Say ? why, that you are insidiously and barbarously dealt with. But you have one thing for your comfort.

Lawyer.—Comfort, indeed ! What comfort ? where is it ?

Non-lawyer.—Nay, you have two comforts.

One is, that of seeing how much they are afraid of you : that if they do take business from you, they take it not as robbers, but as thieves. Why think of the molehill they have filched from you ? Think rather of the mountains they have left, and dare not meddle with.

Another is (for it shows itself through your lamentations,) that the old business is still left to you : so that the damage after all is rather *lucrum cessans* than *damnum emergens;* the business does not increase so fast as it might ; that is all.

Lawyer.—Alas ! you are very much mistaken. From the old statutes there may be a remnant of business left, it is true : but it grows less and less every day. Every day brings new statutes, spreading over the old ground, and covering it with these cursed forms : by and by there won't be a spot left in which a flaw will be to be found.

Besides that the stock of flaws and quibbles is almost ex-

hausted; and (to let you into a secret) the people begin to find us out: we cannot go on quashing through thick and thin, as we used to do. We are forced to draw up: we are forced, little by little, to turn liberalists. There is that passage in Hale against quibbles. It haunts us: it follows like our shadow. It will blow us all up one of these days.—vii. 314–315.

HOW TO ESTIMATE THE DANGER FROM OFFENCES.

Rule 1. *The strength of the temptation being given, the mischievousness of the disposition manifested by the enterprise, is as the apparent mischievousness of the act.*

Thus, it would show a more depraved disposition, to murder a man for a reward of a guinea, or falsely to charge him with a robbery for the same reward, than to obtain the same sum from him by simple theft: the trouble he would have to take, and the risk he would have to run, being supposed to stand on the same footing in the one case as in the other.

Rule 2. *The apparent mischievousness of the act being given, a man's disposition is the more depraved, the slighter the temptation is by which he has been overcome.*

Thus, it shows a more depraved and dangerous disposition, if a man kill another out of mere sport, as the Emperor of Morocco, Muley Mahomet, is said to have done great numbers; than out of revenge, as Sylla and Marius did thousands; or in the view of self-preservation, as Augustus killed many; or even for lucre, as the same emperor is said to have killed some. And the effects of such a depravity, on that part of the public which is apprized of it, run in the same proportion. From Augustus, some persons only had to fear, under some particular circumstances: from Muley Mahomet, every man had to fear at all times.

Rule 3. *The apparent mischievousness of the act being given, the evidence which it affords of the depravity of a man's disposition is the less conclusive, the stronger the temptation is by which he has been overcome.*

Thus, if a poor man, who is ready to die with hunger, steal a loaf of bread, it is a less explicit sign of depravity, than if a rich man were to commit a theft to the same amount. It will be observed, that in this rule all that is said is, that the evidence of depravity is in this case the less conclusive: it is not said that the depravity is positively the less. For in this case it is possible, for anything that appears to the contrary, that the theft might have been committed, even had the temptation been not so strong.

In this case, the alleviating circumstance is only a matter of presumption ; in the former, the aggravating circumstance is a matter of certainty.

Rule 4. *Where the motive is of the dissocial kind, the apparent mischievousness of the act, and the strength of the temptation, being given, the depravity is as the degree of deliberation with which it is accompanied.*

For in every man, be his disposition ever so depraved, the social motives are those which, wherever the self-regarding ones stand neuter, regulate and determine the general tenor of his life. If the dissocial motives are put in action, it is only in particular circumstances, and on particular occasions ; the gentle but constant force of the social motives being for a while subdued. The general and standing bias of every man's nature is, therefore, towards that side to which the force of the social motives would determine him to adhere. This being the case, the force of the social motives tends continually to put an end to that of the dissocial ones ; as, in natural bodies, the force of friction tends to put an end to that which is generated by impulse. Time, then, which wears away the force of the dissocial motives, adds to that of the social. The longer, therefore, a man continues, on a given occasion, under the dominion of the dissocial motives, the more convincing is the proof that has been given of his insensibility to the force of the social ones.

Thus, it shows a worse disposition, where a man lays a deliberate plan for beating his antagonist, and beats him accordingly, than if he were to beat him upon the spot, in consequence of a sudden quarrel : and worse again, if, after having had him a long while together in his power, he beats him at intervals, and at his leisure.—i. 68.

HOW INTENTION, MOTIVE, DISPOSITION, &c., AFFECT THE MISCHIEF OF AN ACT.

Case 1. Where the act is so completely unintentional, as to be altogether *involuntary*. In this case it is attended with no secondary mischief at all.

A bricklayer is at work upon a house : a passenger is walking in the street below. A fellow-workman comes and gives the bricklayer a violent push, in consequence of which he falls upon the passenger and hurts him. It is plain there is nothing in this event that can give other people, who may happen to be in the street, the least reason to apprehend anything in future on the

part of the man who fell, whatever there may be with regard to the man who pushed him.

Case 2. Where the act, though not unintentional, is *unadvised*, insomuch that the mischievous part of the consequences is unintentional, but the unadvisedness is attended with *heedlessness*. In this case the act is attended with some small degree of secondary mischief, in proportion to the degree of heedlessness.

A groom being on horseback, and riding through a frequented street, turns a corner at full pace, and rides over a passenger, who happens to be going by. It is plain that, by this behaviour of the groom, some degree of alarm may be produced, less or greater, according to the degree of heedlessness betrayed by him: according to the quickness of his pace, the fulness of the street, and so forth. He has done mischief, it may be said, by his carelessness, already: who knows but that on other occasions the like cause may produce the like effect?

Case 3. Where the act is *misadvised* with respect to a circumstance which, had it existed, would *fully* have excluded or (what comes to the same thing) outweighed the primary mischief: and there is no rashness in the case. In this case the act is attended with no secondary mischief at all.

It is needless to multiply examples any farther.

Case 4. Where the act is misadvised with respect to a circumstance which would have excluded or counterbalanced the primary mischief *in part*, but not entirely: and still there is no rashness. In this case the act is attended with some degree of secondary mischief, in proportion to that part of the primary which remains unexcluded or uncounterbalanced.

Case 5. Where the act is misadvised with respect to a circumstance which, had it existed, would have excluded or counterbalanced the primary mischief entirely, or in part: and there is a degree of *rashness* in the supposal. In this case, the act is also attended with a farther degree of secondary mischief, in proportion to the degree of rashness.

Case 6. Where the consequences are *completely* intentional, and there is no missupposal in the case. In this case the secondary mischief is at the highest.

Thus much with regard to intentionality and consciousness. We now come to consider in what manner the secondary mischief is affected by the nature of the *motive*.

Where an act is pernicious in its primary consequences, the secondary mischief is not obliterated by the *goodness* of the motive; though the motive be of the best kind. For, notwithstand-

ing the goodness of the motive, an act, of which the primary consequences are pernicious, is produced by it in the instance in question, by the supposition. It may, therefore, in other instances: although this is not so likely to happen from a good motive as from a bad one.*

An act which, though pernicious in its primary consequences, is rendered in other respects beneficial upon the whole, by virtue of its secondary consequences, is not changed back again, and rendered pernicious upon the whole by the *badness* of the motive: although the motive be of the worst kind.†

But when not only the primary consequences of an act are pernicious, but, in other respects, the secondary likewise, the secondary mischief may be *aggravated* by the nature of the motive: so much of that mischief, to wit, as respects the future behaviour of the same person.

It is not from the worst kind of motive, however, that the secondary mischief of an act receives its greatest aggravation.

The aggravation which the secondary mischief of an act, in as far as it respects the future behaviour of the same person, re-

* An act of homicide, for instance, is not rendered innocent, much less beneficial, merely by its proceeding from a principle of religion, of honour, (that is, of love of reputation,) or even of benevolence. When Ravaillac assassinated Henry IV., it was from a principle of religion. But this did not so much as abate from the mischief of the act: it even rendered the act still more mischievous, for a reason that we shall see presently, than if it had originated from a principle of revenge. When the conspirators against the late King of Portugal attempted to assassinate him, it is said to have been from a principle of honour. But this, whether it abated or no, will certainly not be thought to have outweighed the mischief of the act. Had a son of Ravaillac's, merely on the score of filial affection, and not in consequence of any participation in his crime, put him to death in order to rescue him from the severer hands of justice, the motive, although it should not be thought to afford any proof of a mischievous disposition, and should, even in case of punishment, have made such rescuer an object of pity, would hardly have made the act of rescue a beneficial one.

† The prosecution of offences, for instance, proceeds most commonly from one or other, or both together, of two motives, the one of which is of the self-regarding, the other of the dissocial kind: viz. pecuniary interest, and ill-will: from pecuniary interest, for instance, whenever the obtaining pecuniary amends for damage suffered is one end of the prosecution. It is common enough indeed to hear men speak of prosecutions undertaken from *public spirit;* which is a branch of the principle of benevolence. Far be it from me to deny that such a principle may very frequently be an ingredient in the sum of motives, by which men are engaged in a proceeding of this nature. But whenever such a proceeding is engaged in from the sole influence of public spirit, uncombined with the least tincture of self-interest, or ill-will, it must be acknowledged to be a proceeding of the heroic kind. Now acts of heroism are, in the very essence of them, but rare: for if they were common, they would not be acts of heroism. But prosecutions for crimes are very frequent, and yet, unless in very particular circumstances indeed, they are never otherwise than beneficial.

ceives from the nature of a motive in an individual case, is as the tendency of the motive to produce, on the part of the same person, acts of the like bad tendency with that of the act in question.

The tendency of a motive to produce acts of the like kind, on the part of any given person, is as the *strength* and *constancy* of its influence on that person, as applied to the production of such effects.

The tendency of a species of motive to give birth to acts of any kind, among persons in general, is as the *strength*, *constancy*, and *extensiveness* of its influence, as applied to the production of such effects.

Now, the motives whereof the influence is at once most powerful, most constant, and most extensive, are the motives of physical desire, the love of wealth, the love of ease, the love of life, and the fear of pain: all of them self-regarding motives. The motive of displeasure, whatever it may be in point of strength and extensiveness, is not near so constant in its influence (the case of mere antipathy excepted) as any of the other three. A pernicious act, therefore, when committed through vengeance, or otherwise through displeasure, is not near so mischievous as the same pernicious act, when committed by force of any one of those other motives.*

As to the motive of religion, whatever it may sometimes prove to be in point of strength and constancy, it is not, in point of extent, so universal, especially in its application to acts of a mischievous nature, as any of the three preceding motives. It may, however, be as universal in a particular state, or in a particular district of a particular state. It is liable, indeed, to be very irre-

* It is for this reason that a threat, or other personal outrage, when committed on a stranger, in pursuance of a scheme of robbery, is productive of more mischief in society, and accordingly is, perhaps, everywhere more severely punished, than an outrage of the same kind offered to an acquaintance, in prosecution of a scheme of vengeance. No man is always in a rage; but, at all times, every man, more or less, loves money. Accordingly, although a man, by his quarrelsomeness, should for once have been engaged in a bad action, he may, nevertheless, remain a long while, or even his whole lifetime, without engaging in another bad action of the same kind: for he may very well remain his whole lifetime without engaging in so violent a quarrel: nor, at any rate, will he quarrel with more than one, or a few people at a time. But if a man, by his love of money, has once been engaged in a bad action,—such as a scheme of robbery,—he may at any time, by the influence of the same motive, be engaged in acts of the same degree of enormity. For, take men throughout, if a man loves money to a certain degree to-day, it is probable that he will love it, at least in equal degree, to-morrow. And if a man is disposed to acquire it in that way, he will find inducement to rob, wheresoever and whensoever there are people to be robbed.

gular in its operations. It is apt, however, to be frequently as powerful as the motive of vengeance, or, indeed, any other motive whatsoever. It will sometimes, even, be more powerful than any other motive. It is, at any rate, much more constant.* A pernicious act, therefore, when committed through the motive of religion, is more mischievous than when committed through the motive of ill-will.

Lastly, The secondary mischief,—to wit, so much of it as hath respect to the future behaviour of the same person,—is aggravated or lessened by the apparent depravity or beneficence of his disposition: and that in the proportion of such apparent depravity or beneficence.—i. 74-76.

THE CHARACTER OF THE OFFENDER AS INFERRED FROM THE NATURE OF AN OFFENCE.

Let us examine the grounds of *aggravation* which may be drawn from this source.

1. The less the party injured was in a condition to defend himself, the more strongly the sentiment of natural compassion ought to act. The laws of honour come to the support of this instinct of pity, and make it an imperious duty to succour the weak, and to spare him who is no longer able to resist. First indication of a dangerous character.—*Weakness oppressed.*

2. If weakness alone ought to awaken compassion, the appearance of a suffering individual ought to act in this direction with a double force. The simple refusal of relief to the distressed, raises a presumption little favourable to the character of an individual: but what must his character be, who seizes the moment of calamity for the purpose of increasing the anxiety of an afflicted mind; the moment of disgrace, in order to render it more bitter by a new affront; the moment of indigence, for the purpose of entirely stripping its victims? Second indication of a dangerous character.—*Distress aggravated.*

3. It is an essential branch of moral policy, that those who

* If a man happen to take it into his head to assassinate, with his own hands or with the sword of justice, those whom he calls heretics,—that is, people who think, or perhaps only speak, differently upon a subject which neither party understands,—he will be as much inclined to do this at one time as at another. Fanaticism never sleeps: it is never glutted: it is never stopped by philanthropy; for it makes a merit of trampling on philanthropy: it is never stopped by conscience; for it has pressed conscience into its service. Avarice, lust, and vengeance, have piety, benevolence, honour; fanaticism has nothing to oppose it.

have been accustomed to reflection, and who may be presumed to possess wisdom and experience, should be treated with respect by those who have not acquired the same habits, or possessed the same advantages of education. This species of superiority is generally received by the more elevated ranks from those below them; by old persons from younger persons of the same rank; and by certain professions set apart for the public instruction. There exists among the mass of the people certain sentiments of deference and respect, in relation to these distinctions; and this respect, greatly useful in repressing without effort the seductive passions, is one of the best foundations for manners and laws. Third indication of a dangerous character—*Respect towards superiors disregarded.**

4. When the motives which have led to the commission of an offence have been comparatively light and frivolous, the sentiments of honour and benevolence must have had but little force. If the man who is urged by an imperious desire of vengeance to transgress the laws of humanity is esteemed dangerous, what should be thought of him who gives way to acts of ferocity, from a simple motive of curiosity, of imitation, or of amusement? Fourth indication of a dangerous character—*Gratuitous cruelty.*

5. Time is particularly favourable to the development of the tutelary motives. During the first assault of passion, as under a thunder-stroke, the sentiments of virtue may yield for a moment: but if the heart is not perverted, reflection will soon restore them to their first force, and establish their triumph. If a sufficiently long time elapse between the conception of a crime and its accomplishment, it is an unequivocal proof of matured and consolidated wickedness. Fifth indication of a dangerous character—*Premeditation.*

6. The number of accomplices is another mark of depravity: concert supposes reflection. The union of many persons against a single innocent person also displays a cruel cowardice. Sixth indication of a dangerous character—*Conspiracy.*

To these causes of aggravation may be added two other causes not so easily classed: *falsehood* and *violation of confidence.*

Falsehood stamps a character with a deep and degrading stain,

* It was from not having known the utility, not to say the necessity, of this subordination, that the French fell, during the revolution, into that excess of folly which delivered them up to unheard-of evils, and which has carried desolation to the four quarters of the world: it was because they had no superiors in France, that there was no security. The principle of equality includes within itself that of anarchy: it is the total of the small masses of particular influence which sustains the grand barrier of the laws against the torrent of the passions.

which even the most brilliant qualities cannot efface. Public opinion is right in this respect. Truth is one of the first wants of man ; it is one of the elements of our existence ; necessary as the light of the day to us. At every moment of our lives, we are obliged to build our judgments, and to direct our conduct, upon the knowledge of facts, of which there are only a few that can pass under our own observation. Hence there follows the most absolute necessity for our trusting to the reports of others. If falsehood is mingled with these reports, our judgments become erroneous, our progress faulty, our hopes deceived : we live in a state of unquiet distrust, and know not where to seek for security. In a word, falsehood includes the principle of every evil, since it would bring in its train the dissolution of human society.

The importance of truth is so great, that the least violation of its laws, even in trifling matters, always draws after it a certain danger : the slightest wandering is an attack upon the respect due to it : the first transgression facilitates the second, by familiarizing the odious idea of a lie. If the evil of falsehood is so great in things which are unimportant in themselves, what will it be in those greater occasions when it serves as an instrument of crime ?

Falsehood is sometimes an essential circumstance in a crime : sometimes simply an accessory. It is necessarily comprised in perjury, and in fraudulent acquisition, and all its modifications. In other offences, it is only collateral and accidental. It is only by relation to these last that it can furnish a separate cause of aggravation.

Violation of confidence refers to a particular position ; to a power confided, which imposes on the delinquent an obligation which he has violated. It may sometimes be considered as the principal offence, sometimes only as an accessory offence. It is not necessary here to consider the details.

We may here make one general observation with respect to all these sources of aggravation. Although they all furnish unfavourable indications as to the character of the offender, this is not a reason for proportionably augmenting his punishment. It is sufficient if a certain modification be given to it, which shall have some analogy with this accessory offence, and which shall serve to waken in the minds of the citizens a salutary antipathy against this aggravating circumstance. This will become more clear, when we treat of the methods of rendering punishments characteristic. *

* An interesting question in morals and legislation arises here—
If an individual perform actions which the public opinion condemns, and

HONOUR AMONG THIEVES.

In the ordinary intercourse of life, fidelity to engagements is a virtue: why? because in the ordinary intercourse of life, among the engagements taken there is not one in a thousand, the execution of which is not beneficial to the community upon the whole. That feature of negative sociableness which disposes men not to obstruct or thwart one another in their enterprises, even this, too, is, as far as it goes, a virtue: why? because in ordinary life, among the enterprises engaged in, great and small, there is not one in a million, the success of which is not beneficial to the community as before. But for the same reason that, in the case of innocent and beneficial engagements and enterprises, fidelity and disposition to mutual adherence are *virtues:* in the case of criminal ones they are *vices.* A sort of honour may be found (according to a proverbial saying) even among *thieves.* Good, as an *observation;* that is, *true* in fact; but bad if the fact be regarded with complacency, and either the thieves themselves, or the society infested by them, are considered as being the better for it. That honour does exist among thieves is not to be doubted; for thieves are a society to one another, and it is only by honour that any society can be kept together. But to regard such honour with complacency, to speak with reprobation of every instance of the absence of it, to speak with eulogium of every instance of the manifestation of it, is indeed a natural enough prejudice, but, in some of its consequences, a very pernicious one. Without honour, society even among thieves could not exist;—true, but the thing

which, according to the principles of utility, it ought not to condemn, can an unfavourable indication be drawn from hence with respect to the character of that individual?

I reply, that a good man, though he submit in general to the tribunal of public opinion, may reserve to himself the right of private judgment in particular cases, when the judgment of this tribunal appears to him opposed to his reason and his happiness, or when it exacts from him a painful sacrifice, without any real utility to any person. Take a Jew to Lisbon, for example: he dissimulates, he violates the laws, he braves an opinion which has in its favour all the force of the popular sanction: is he, therefore, the most wicked of men? Do you believe him capable of every crime? Will he be a slanderer, a thief, a perjurer, if he could hope not to be discovered? No: a Jew in Portugal is not more addicted to these crimes than others. A monk allows himself in secret to violate some of the absurd and painful observances of his convent: does it follow, that he would be a deceitful and dangerous man, ready to violate his word upon a point in which probity was concerned? Such a conclusion would be very ill founded. Good sense, enlightened by interest, is sufficient to detect a general error, and does not on that account lead to the contempt of essential laws.

to be wished for is, that among thieves, in so far as they are thieves, society never should exist. Of thieves, as of other men, the thing to be desired is, that they should observe the laws of honour in some cases, not observe them in others: observe them on the occasion of their honest engagements; not observe them on occasion of their dishonest ones: observe them in their ordinary dealings with other men, not observe them in their dealings with one another in their capacity of thieves. By whatsoever causes produced, infidelity to criminal engagements is *repentance;* and wherein is a man the better for being without repentance? To give birth to such infidelity—to purchase such repentance—is the object of every *reward* offered for the discovery of accomplices in crimes. To censure a man for the acceptance of any such offer—to commend him for the refusal of it—is to employ so much of the force of the popular or moral sanction, in a direction diametrically opposite to that of the action of the political sanction; diametrically opposite to the interest of society—of every society, but that of malefactors.—iv. 225-226.

INEFFICACY OF REWARD TO RESTRAIN FROM CRIME.

A young king, in the first ardour for improvement, having resolved to purge his kingdom from all crimes, was not satisfied with this alone. His natural gentleness was shocked at the idea of employing punishment. He determined to abolish it altogether, and to effect everything by reward. He began with the crime of theft: but in a short time, all his subjects were entitled to reward; all of them were honest. Every day they were entitled to new rewards; their honesty remained inviolate. A scheme for preventing smuggling was proposed to him. "Wise king," it was said, "for every penny that ought to be paid into your treasury, give two, and the hydra is vanquished." The victory was certain; but he perceived that, like that of Pyrrhus, it would be somewhat costly.—ii. 208.

THE PECUNIARY PUNISHMENTS OF THE ANGLO-SAXONS.

It is a well-known adage, though it is to be hoped not a true one, that every man has his price. It is commonly meant of a man's virtue. This saying, though in a very different sense, was strictly verified by some of the Anglo-Saxon laws: by which a

fixed price was set, not upon a man's virtue indeed, but upon his life: that of the sovereign himself among the rest. For 200 shillings you might have killed a peasant: for six times as much, a nobleman: for six-and-thirty times as much you might have killed the king.* A king in those days was worth exactly 7,200 shillings. If, then, the heir to the throne, for example, grew weary of waiting for it, he had a secure and legal way of gratifying his impatience: he had but to kill the king with one hand, and pay himself with the other, and all was right. An Earl Godwin, or a Duke Streon, could have bought the lives of a whole dynasty. It is plain, that if ever a king in those days died in his bed, he must have had something else, besides this law, to thank for it. This being the production of a remote and barbarous age, the absurdity of it is presently recognised: but, upon examination, it would be found, that the freshest laws of the most civilized nations are continually falling into the same error.† This, in short, is the case wheresoever the punishment is fixed while the profit of delinquency is indefinite: or, to speak more precisely, where the punishment is limited to such a mark, that the profit of delinquency may reach beyond it.—i. 87.

DEATH PUNISHMENT COMPARED WITH PERPETUAL IMPRISONMENT.

It appears to me, that the contemplation of perpetual imprisonment, accompanied with hard labour and occasional solitary confinement, would produce a deeper impression on the minds of persons in whom it is more eminently desirable that that impression should be produced, than even death itself. We have already observed, that to them life does not offer the same attractions as it does to persons of innocent and industrious habits. Their very profession leads them continually to put their existence in jeopardy; and intemperance, which is almost natural to them, inflames their brutal and uncalculating courage. All the circumstances that render death less formidable to them, render laborious restraint proportionably more irksome. The more their habitual state of existence is independent, wandering, and hostile to steady and laborious industry, the more they will be terrified by a state of passive submission and of laborious confinement, a

* Wilkin's Leg. Anglo-Sax. pp. 71, 72.

† See in particular the *English Statute laws* throughout, *Buonaparte's* Penal Code, and the recently enacted or not enacted *Spanish* Penal Code.

mode of life in the highest degree repugnant to their natural inclinations.

Giving to each of these circumstances its due weight, the result appears to be, that the prodigal use made by legislators of the punishment of death has been occasioned more by erroneous judgments [arising from the situation in which they are placed with respect to the other classes of the community] than from any blameable cause. Those who make laws belong to the highest classes of the community, among whom death is considered as a great evil, and an ignominious death as the greatest of evils. Let it be confined to that class, if it were practicable, the effect aimed at might be produced; but it shows a total want of judgment and reflection to apply it to a degraded and wretched class of men, who do not set the same value upon life, to whom indigence and hard labour are more formidable than death, and the habitual infamy of whose lives renders them insensible to the infamy of the punishment.

If, in spite of these reasons, which appear to be conclusive, it be determined to preserve the punishment of death, in consideration of the effects it produces *in terrorem*, it ought to be confined to offences which in the highest degree shock the public feeling—to murders, accompanied with circumstances of aggravation, and particularly when their effect may be the destruction of numbers; and in these cases, expedients, by which it may be made to assume the most tragic appearance, may be safely resorted to, in the greatest extent possible, without having recourse to complicated torments.—i. 450.

PUNISHMENT BY DISGRACE.

These punishments admit of minute division: they have all the degrees possible from mere blame to infamy, from a temporary suspension of good-will, to active and permanent ill-will: but these several degrees depend altogether upon accidental circumstances, and are incapable of being estimated by anticipation. Punishments of the pecuniary or chronical class, as, for example, imprisonment, are susceptible of being exactly measured: punishments that depend on the moral sanction, not. Before they are experienced, the value put upon them is necessarily extremely inaccurate. In respect of intensity, they are liable to be inferior to the greater part of those belonging to the political sanction; they consist more in privations of pleasure, than in positive evils.

This it is that constitutes their principal imperfection ; and it is solely for supplying this imperfection, that penal laws were established.

One of the circumstances by which their effect is weakened, is the *locality* of their operation. Do you find yourself exposed to the contempt of the people with whom you are in the habit of associating ? to exempt yourself from it, all that you have to do is to change your abode. The punishment is reduced to the giving a man the option to remain exposed to the inconveniences resulting from this contempt, or to inflict on himself the punishment of banishment, which may not be perpetual. He does not abandon the hope of returning, when by lapse of time the memory of his trangressions shall be effaced, and the public resentment appeased.

2. In respect of *equability*, these punishments are really more defective that at first sight they might appear. In every condition in life, each man has his own circle of friends and acquaintance : to become an object of contempt or aversion to this society is a misfortune as great to one man as to another. This is the result that may at first view present itself to the mind, and which, to a certain extent, is really correct ; it will, however, upon a more narrow scrutiny of the matter, be found, that in point of intensity this class of punishment is subject to extreme variation, depending, as it does, upon the condition in life, wealth, education, age, sex, and other circumstances : the casual evils resulting from the punishments belonging to this sanction are infinitely variable : shame depends upon sensibility.

Women, especially among civilized nations, are more alive to, and susceptible of, the impression of shame than men. From their earliest infancy, and even before they are capable of understanding the object of it, one of the most important branches of their education is, to instil into them principles of modesty and reserve ; and they are not long in discovering that this guardian of their virtue is at the same time the source of their power. They are, moreover, physically weaker, and more dependent than men, and stand more in need of protection ; it is more difficult for them to change their society, and to remove from the place of their abode.

At a very early age, generally speaking, sensibility to the moral sanction is not remarkably acute : in old age it becomes still more obtuse. Avarice, the only passion that is fortified by age, subdues all sense of shame.

A weak state of health, morbid irritibility, any bodily defect,

any natural or accidental infirmity, are circumstances that aggravate the suffering from shame, as from every other calamity.

Wealth, considered of itself, independently of rank and education, has a tendency to blunt the force of these impressions. A rich man has it in his power to change his residence ; to procure fresh connexions and acquaintance, and by the help of money to purchase pleasures for which other people are dependent upon good-will. There exists a disposition to respect opulence on its own account ; to bestow on the possessor of it gratuitous services, and, above all, external professions of politeness and respect.

Rank is a circumstance that augments the sensibility to all impressions that affect the honour ; but the rules of honour and morality are not always calculated upon the same scale : the higher ranks are, however, in general, more alive to the influence of opinion than the inferior classes.

Profession and habitual occupation materially affect the punishments proceeding from this source. In some classes of society, the point of honour is at the very highest pitch, and any circumstance by which it is affected produces a more acute impression than any other species of shame. Courage, among military men, is an indispensable qualification : the slightest suspicion of cowardice exposes them to perpetual insults : thence, upon this point, that delicacy of feeling among men who, upon other points, are in a remarkable degree regardless of the influence of the moral sanction.

The middle ranks of society are the most virtuous : it is among them that, in the greatest number of points, the principles of honour coincide with the principles of utility : it is in this class also that the inconveniences arising from the forfeiture of esteem are most sensibly felt, and that the evil consequences arising from the loss of reputation produce the most serious ill consequences.

Among the poorer classes, among men who live by their daily labour, sensibility to honour is in general less acute. A day-labourer, if he be industrious, though his character be not unspotted, will be at no loss for work. His companions are companions of labour, not of pleasure : from their gratuitous services he has little to expect, and as little to ask. His wants are confined to the mere necessaries of life. His wife and his children owe him obedience, and dare not withhold it. The pleasures which arise from the exercise of domestic authority fill up the short intervals of labour.—i. 456-457.

HARD LABOUR IN PRISON DISCIPLINE.

What is at the bottom of this predilection for hard labour? Sound. The labour is *made* hard, that it may be *called* hard; and it is called *hard*, that it may be frightful, for fear men should fall in love with it. *Hard labour* was the original object. The error is no new one: sentences of commitment to hard labour are as frequent in our penal code as the execution of them has been rare. It is no peculiar one: it is to be found upon the Continent as well as here. Dutch *rasp-house*—Flemish *maison de force*—everything impressed the mind with the idea of hard labour. *House of hard labour* was accordingly the original name. *House of hard labour*, it was suggested by somebody, is a name by which no house will ever be called, and the well-imagined word *penitentiary-house* was put in its stead. But though the name was laid aside, the impression which had suggested that name remained in force.

The policy of thus giving a bad name to industry, the parent of wealth and population, and setting it up as a scarecrow to frighten criminals with, is what I must confess I cannot enter into the spirit of. I can see no use in making it either odious or infamous. I see little danger of a man's liking work of any kind too well; nor if by mischance it should fail of providing him in suffering enough, do I see the smallest difficulty of adding to the hardness of his lot, and that without any addition to the hardness of his labour. Do we want a bugbear? Poor indeed must be our invention, if we can find nothing that will serve but industry. Is coarse diet nothing? is confinement—is loss of liberty in every shape—nothing? To me it would seem but so much the better, if a man could be taught to love labour, instead of being taught to loath it. Occupation, instead of the prisoners' scourge, should be called, and should be made as much as possible, a cordial to him. It is in itself sweet, in comparison with forced idleness; and the produce of it will give it a double savour. The mere exertion, the mere naked energy, is amusement, where looser ones are not to be found. Take it in either point of view, industry is a blessing: why paint it as a curse?

Hard labour? labour harder than ordinary, in a prison? Not only it has no business there, but a prison is the only place in which it is not to be had. Is it exertion that you want? violent exertion? Reward, not punishment, is the office you must apply to. Compulsion and slavery must, in a race like this, be ever an

unequal match for encouragement and liberty; and the rougher the ground, the more unequal. By what contrivance could any man be made to do in a jail, the work that any common coal-heaver will do when at large? By what compulsion could a porter be made to carry the burthen which he would carry with pleasure for half-a-crown? He would pretend to sink under it: and how could you detect him? Perhaps he *would* sink under it —so much does the body depend upon the mind. By what threats could you make a man walk four hundred miles, as Powell did, in six days? Give up, then, the passion for penitentiary hard labour, and, among employments not unhealthy, put up with whatever is most productive.—iv. 144.

PRISONS AS SCHOOLS OF VICE.

Their conversation will naturally turn upon their criminal exploits. * * * Each malefactor will naturally give a detail of the several feats of ingenuity which, in the course of those exploits, the occasion led him to practise. These facts will naturally be noted down, were it only on the score of curiosity. But as means of gratifying those propensities, which the situation in question has a strong tendency to strengthen and confirm, they will make a much more forcible impression. An ample mass of observations will be soon collected, drawn from the experience of the whole society, and each particular member of it will soon be wise with the wisdom of the whole. Prisons, therefore, have commonly and very properly been styled *schools of vice*. In these schools, however, the scholar has more powerful motives for, and more effectual means of, acquiring the sort of knowledge that is to be learnt there, than he has of acquiring the sort of knowledge that is taught in more professed schools. In the professed school, he is stimulated only by fear; he strives against his inclination: in these schools of vice, he is stimulated by hope, acting in concert with his natural inclination. In the first, the knowledge imparted is dispensed only by one person; the stock of knowledge proceeds from one person: in the others, each one contributes to the instruction of all the others. The stock of knowledge is the united contribution of all. In professed schools, the scholar has amusements more inviting to him than the professed occupations of the school: in these, he has no such amusements; the occupation in question is the chief of the few pleasures of which his situation admits.—i. 429.

CONTAMINATION IN PRISONS.

True it is that all this while the innocent part of the thus forcibly *mixed company*, thus dealt with, are (as the phrase is) *contaminated;* and the guilty are occupied in contaminating as well as in being still further contaminated. "But what care I for all this?" says to himself noble lord or honourable gentleman; "none of it can ever fall upon me or any friends of mine. No danger is there of our being thus taken up; and if we were, we should be bailed of course. Then, as to the contamination, this could not be put an end to without innovation; and that would be out of the frying-pan into the fire. Besides, there is a satisfaction in having thus to talk of *contamination:* as it is the poor alone that are exposed to it, it gives a zest to the pleasure we feel in the contempt we pour upon them; it magnifies the great gulf which is fixed between them and us." Such is the almost universally-established sentimentality and correspondent language in the upper regions: as if by far the most maleficent of contaminations were not that, which (as hath over and over again been demonstrated) in these same upper regions, and in particular, in the part occupied by Judge and Co., has its source.—v. 533.

CORRUPTION OF BLOOD.

Under the English law, with respect to property of a particular description, the innocent grandson, by the delinquency of his father, is made to lose the chance he had of succeeding to his grandfather, because no title can be deduced through the corrupt blood of the father: this is what, by English lawyers, is called *corruption of blood.*

The strength of the argument lies in the metaphor: this cabalistic expression serves as an answer to all objections. The justice of the metaphor turns upon two suppositions:—

The one is, that where a man has committed a felony, (stolen a horse, for instance,) his blood immediately undergoes a fermentation, and (according to the system of physiology in use upon this occasion) becomes really corrupt.

The other is, that when a man's blood is in this state of putrescency, it becomes just and necessary to deprive his children not only of all real property, of which he was in the enjoyment, but of what might thereafter be derived through him.

The end of punishment is to restrain a man from delinquency. The question is, whether it be an advantageous way of endeavouring at this, to punish in any and what cases, in any and what mode, to any and what degree, his wife, his children, or other descendants; that is, with a direct intention to make them sufferers?

If a man can be prevented from running into delinquency, by means of punishment hung over the heads of persons thus connected with him, it is not, as in the cases above-mentioned, because it is expected that they should have it in their power to restrain him, by any coercion, physical or mental, of their imposing: it is not that they are likely to have it in their power, by anything they can *do*. In the case of the wife, it is not very likely; in the case of children already born, it is still less likely; in the case of children not yet born, it is impossible. What is expected to work upon him, is the image of what they may be made to *suffer*. The punishment, then, upon them, may be, and it is expected will be, without any act of theirs, a punishment upon him. It will produce in him a pain of sympathy.

First, we will consider the case of the wife, where the punishment consists in being made to lose what is already in specific prospect: viz. The immoveable property in which she had her dower.

It has been doubted whether it were possible for a man to love another better than himself; that is, to be affected, not merely momentarily, but for a length of time together, more by the pains and pleasures of another than by his own. Some have denied the possibility; all will admit that it is extremely rare. Suppose it, then, to happen in one case out of five hundred; and, to do all possible honour to the marriage state, let us suppose that this person whom a man loves better than he does himself, is never any other than his wife. But it is not so many as half the number of men of an age to commit crimes, that have wives. Nor is there above one in a hundred who has lands, of which a wife is endowed. Upon this calculation, there is not above one man in 50,000 of those that are liable to this mode of punishment, on whom it would operate in as great a degree as if laid on himself. In the remaining 49,999 instances, in order to produce the same effect, more punishment must be laid upon the innocent wife, than would need to be laid upon the offending husband. Let us suppose, for the purpose of the argument, that every man loves his wife half as much as he does himself: on this supposition, ten degrees or grains (or by what other name soever it shall be thought

proper to call so many aliquot parts of punishment) must be laid upon the wife, in order to produce the effect of five grains laid directly upon the husband. On this supposition, then, in 49,999 cases out of 50,000, half the punishment that is laid on in this way, is laid on in waste.*

Second, What has been said with regard to the wife, may, without any very considerable variation, be applied to the children. In this latter case, however, generally speaking, the affection is likely to be more uniform and certain, and consequently the contemplation of the suffering they may be exposed to more certainly efficacious, in restraining the commission of the act intended to be guarded against. The same method, making due allowance on this score, will therefore apply to this, as to the preceding case.

What follows from this, therefore, is, that till the whole stock of direct punishment be exhausted upon the offender himself, none ought in this way to be attempted to be applied through the medium of the innocent.—i. 480-481.

American savages have been proverbial for cruelty. The savage is mild and placable, compared with the English lawyer. The savage minces or broils his enemy, and is satisfied: the lawyer, at a whisper from above, gluts on the child unborn his unprovoked and mercenary cruelty. No mischief is so unassuageable as that which employs for its instrument a mass of corrupted language. Perillus's bull, after it had broiled its author, was soon laid upon the shelf. *Corruption of blood*, the invention of a corrupted understanding, at the suggestion of a corrupted heart—that most barbarous of all abuses of words,—remains, if the lawyer have his will, remains to corrupt justice as well as language, to the end of time.—vii. 436.

OUTLAWRY.

To this mode of punishment the objection of inequality applies with peculiar force. The fund out of which a man who has a fund of his own subsists, is either his labour, or his property. If he has property, it consists either in immoveables, or in moveables. If in immoveables, it is either in his own hands, or in

* It will not, it is hoped, be understood that any stress is meant to be laid upon the particular number here employed: the reader may put in numbers for himself: they are merely given as a specimen of the manner in which such an inquiry ought to be conducted.

those of other persons: if in moveables, it is either in public hands, or in private: if in private, either in his own hands, or in those of other persons.

A man who subsists by his labour, is in general scarcely at all affected by this punishment. He receives his pay, if not before he does his work, at least as soon as a small quantity of it is done.

A man whose fund of subsistence consists in immoveable property, is very little affected by this punishment, if that property is in his own hands. The utmost inconvenience it can subject him to, is the obliging him to deal for ready money. If his property is in the funds, he is not at all affected. There seems no reason to suppose that those who have the management of those funds, would refuse a man his dividend on the ground of any such disability. They would have no interest in such a refusal; and the importance of keeping up public credit would probably be a sufficient motive to keep them in this instance from departing from the general engagement.

If a man's property consists in moveable property which is in his own hands—for instance, stock in trade, it affects him indeed, but not very deeply. The utmost it can do, is to oblige him to deal for ready money; to preclude him from selling upon credit. It does not preclude him from buying upon credit, since, though others are not amenable to him, he is to others.

It is only where a man's property consists in credits—for example, in immoveables in the hands of a tenant, in a sum due for goods sold on credit, or in money out upon security, that it can affect him very deeply. Of such a man it may be the utter ruin.

In this case, whether a man suffer to the extreme amount, or whether he suffer at all, depends upon what? upon the moral honesty of those he happens to have to do with.

There are two circumstances, therefore, on which the quantum of this mode of punishment depends: 1*st*, The nature of the fund from whence he draws his subsistence; 2*d*, The moral honesty of the people he happens to have to do with. But neither of these circumstances is in any way connected with the degree of criminality of any offence for which a man can be thus punished. Of two men, both guilty, and that in the same degree, one may be ruined, the other not at all affected. The greater punishment is as likely to fall upon the lesser offender as upon the greater: the lesser upon the greater offender, as upon the lesser.

Another objection applies to this mode of punishment, on the score of *immorality*. The punishment being of a pecuniary nature, there is a profit arising out of it, which accordingly is to be dis-

posed of in favour of somebody. And in whose favour is it disposed of? in favour of any one, who, having contracted an engagement with the delinquent, can, for the sake of lucre, be brought to break it.

It may be said, that the engagement being by the supposition rendered void, there is no harm in its being broken. True; it is void, as far as concerns the political sanction, but it is not void by the moral. All that the law does is not to compel him to perform it; but the interests of society require, and, accordingly, so does the moral sanction require, that a man should be ready to perform his engagement, although the law should not compel him. If a man can be brought in this way to break his engagement, it is a sign that the power of money over him is greater than that of the moral sanction. He is therefore what is properly termed an immoral man; and it is the law that either has begotten in him that evil quality, or at least has fostered it.

The dispensations, therefore, of the political sanction, are in this case, set at variance with those which are, and ought to be, those of the moral sanction. It invites men to pursue a mode of conduct which the moral sanction, in conformity to the dictates of utility, forbids.—i. 513-514.

When a man is transformed into an outlaw, a *caput lupinum*, a wolf's head, as we learn from the highest authorities, takes place of the original head planted by nature upon his shoulders. While John Wilkes was in Paris, an attorney's clerk performed this metamorphosis upon his head, by pronouncing the magical words at a public-house called the Three Tons, in Brook Street, Holborn. A discovery was made, that one of the words belonging to the formulary was wanting or misplaced. The effect of this discovery was, to replace upon the shoulders of the blasphemer his natural head, such as it may be seen in Hogarth's print of it.—vii. 254.

DEODANDS.

You are a farmer. You employ a wagon. You send your son to drive it: he slips down, is run over and killed. The king, or somebody in his name, is to have your wagon. This is the consolation which the law of England gives you for your loss.

This idea might be improved upon. Let it be a law that when a man happens to break his neck, the people of his parish shall draw lots who shall be hanged to keep him company. The pun-

ishment would be greater, but the reason for punishment would be the same.

If, instead of a wagon, it had been a ship that was moving to your son's death, it would make no difference: though the ship were laden with the treasure of the Indies, it would make no difference; the ship and its lading would be the king's.—i. 485.

CROMWELL AND LAW REFORM.

In a conversation with Ludlow, Cromwell said, "That it was his intention to contribute the utmost of his endeavours to make a thorow reformation of the clergy and law: but," said he, "the sons of Zeruiah are yet too strong for us: and we cannot mention the reformation of the law, but they presently cry out, we design to destroy propriety: whereas the law, as it is now constituted, serves only to maintain the lawyers, and to encourage the rich to oppress the poor; affirming that Mr Coke, then Justice in Ireland, by proceeding in a summary and expeditious way, determined more causes in a week than Westminster Hall in a year; saying farther, that Ireland was as a clean paper in that particular, and capable of being governed by such laws as should be found most agreeable to justice; which may be so impartially administered as to be a good precedent even to England itself: where, when they once perceive propriety preserved at an easy and cheap rate in Ireland, they will never permit themselves to be so *cheated and abused* as now they are."*

Behold what was said in his day by *Cromwell!* In my eyes, it ranks that wonderful man higher than anything else I ever read of him:—it will not lower him in yours.†

As to the *clergy*, in your happy country the reformation has already been effected. Remains as and for the only class, in the instance of which any the least need of reform still remains—the class of *lawyers*. That, in your country, in comparison with what it is here, the quantity of abuse issuing from this source is in no small degree inferior, I am fully sensible: but, so long as any the least particle of mischief, though it were but a single one, is perceptible, why it should continue unexcluded,—unless by the exclusion put upon it, a preponderant mass of mischief can be shown to be let in,—remains for him to say, who to the desire,

* Ludlow's Memoirs, i. 319; i. 430; ib. iii. 75. Coke's Execution, ib. ii. 717.

† The United States.

seems to himself to add the power, of rendering to his profession and its interest so acceptable a service.

In this same volume (i. p. 436) the last paragraph is in these words:—"In the meantime the reformation of the law went on but slowly, it being the interest of the lawyers to preserve the lives, liberties, and estates of the whole nation in their own hands. So that upon the debate [on the subject] of *registering deeds in each county, for want of which, within a certain time fixed after the sale, such sales should be void, and being so registered, that land should not be subject to any encumbrance;* this word *encumbrance* was so managed by the lawyers that it took up three months' time before it could be ascertained by the committee."

Thus, by the particular and sinister interest of the lawyers, was the reformation of the law obstructed. From the same honest pen, behold how, and by the force of what sinister interests, so desirable and admirable an enterprise was soon afterwards finally quashed (ii. 717:)—"The Parliament, on their part, being sensible of their danger," (viz. from the army: this was the latter end of 1659,) "were not wholly negligent of the means to prevent it: though I cannot say they gave no advantages to the faction of the *army*, by disgusting the sectarian party, *and falling in with the corrupt interests of the lawyers and clergy*, wherein the army did not fail to outbid them when they saw their time."—iv. 501.

LORD LOUGHBOROUGH AND BENJAMIN FRANKLIN.

This preëminent lawyer happened to furnish, within my observation, two exhibitions as strongly contrasted, perhaps, as ever were furnished by the same person in so short a space of time. The first time I saw him he was in black, with the sword stuck by his side, holding up the train of the then chancellor; but this is not one of the two I mean. Not long after this, attending in the Court of King's Bench as a student, I saw him with a silk gown on his back making a motion with far more hesitation and distress than I ever witnessed on the part of the youngest and most obscure tyro. This was the first time of my seeing him in the character of a lawyer: the last time was at the council-board. It must, I think, have been by Lind's means that I enjoyed a privilege in which I had so few to share with me. I speak only from present inference; for I do not recollect that he himself was there. At that board, Franklin stood as the silent and necessarily defenceless butt of his eloquent invectives. No hesitation then:

self and language were, in equal perfection, subjects of command. Fortunate was I beyond all probability in being present at so memorable a scene. Members of the board, nearer a dozen, I believe, than a score, sitting on the opposite sides of a long table. At the upper end, the Duke of Portland as president. Auditors, I question whether there were more than a dozen besides myself. Of the president's chair, the back parallel to and not far distant from the fire: the chimney-piece projecting a foot or two from that side of the apartment formed a recess, on each side. Alone in the recess, on the left hand of the president, stood Benjamin Franklin, in such position as not to be visible from the situation of the president, remaining the whole time like a rock in the same posture, his head resting on his left hand; and in that attitude abiding the pelting of the pitiless storm. If necessary, at the call of a subpœna, I could give some tolerable account of the materials, colour, and buttons of that coat which, I am ashamed to think, retarded, for such a length of time, not much less, I fear, than a week,—if not the cessation of hostilities, at any rate the conclusion of peace between so many mighty contending powers and their subject millions. Before the incident ever found its way into the public prints, I had it from a noble friend, who was present at the last exhibition of the important vestment as I was at the first. To return to Wedderburn. I was not more astonished at the brilliancy of his lightning, than astounded by the thunder that accompanied it. As he stood, the cushion lay on the council-table before him: his station was between the seats of two of the members on the side of the right hand of the Lord President. So narrow were the dimensions of this important justice-chamber; they were those of a private drawing-room. I would not, for double the greatest fee the orator could on that occasion have received, been in the place of that cushion: the ear was stunned at every blow: he had been reading, perhaps, in that book in which the prince of Roman orators and rhetoric professors instructs his pupils how to make impression.—x. 59-60.

DAINES BARRINGTON.

He was a very indifferent judge; a quiet, good sort of a man; not proud but liberal; and vastly superior to Blackstone in his disposition to improvement: more impartial in his judgment of men and things,—less sycophancy, and a higher intellect. He was an English polyglot lawyer. He sits in judgment on kings

and others; exhibits their arbitrary tricks, not in the spirit of those who pour out all laud upon that king, who, in cutting men's throats, manages to cut more throats of some other king's people than of his own people. His book was a great treasure; and when I saw the placid little man in the Strand, I used to look at him with prodigious veneration. He had a particular way of holding his hands before him and twisting his thumbs. He never got higher than to be a Welch judge. He was not, intentionally, a bad judge, though he was often a bad one. He took merit to himself for cancelling a hundred pages of his book. I do not know the cause: the book is everything, apropos of everything. —x. 121.

JOHN HOWARD.

My venerable friend, was much better employed than in arranging words and sentences. Instead of doing what so many could do if they would, what he did for the service of mankind was what scarce any man could have done, and no man would do but himself. In the scale of moral desert, the labours of the legislator and the writer are as far below his, as Earth is below Heaven. His was the truly Christian choice: the lot in which is to be found the least of that which selfish nature covets, and the most of what it shrinks from. His kingdom was of a better world! He died a martyr after living our apostle.—iv. 121.

COLONEL BARRÉ AND LORD DARTRY.*

Barré loves to sit over his claret, pushes it about pretty briskly, and abounds in stories that are well told, and very entertaining. He really seems to have a great command of language; he states clearly and forcibly; and, upon all points, his words are fluent and well-chosen. Lord Dartry is also intelligent and entertaining. They were talking over Irish affairs this afternoon: their conversation was instructive: when they differed, as they did now and then, about matters of fact as well as opinion, it was with great firmness and urbanity. I put a word in now and then to keep the ball up, and to avoid appearing a perfect ninny: but it was pain and grief to me.—*Letter to George Wilson*, 1781.—x. 104.

* Thomas Dawson baron Dartry, afterwards Viscount Cremorne.

PITT AND HIS BROTHER THE SECOND LORD CHATHAM.

Do you know Lord Chatham? In his appearance, upon the whole, he puts me in mind of Dan. Parker Coke; but he has his father's Roman nose, and, if events should concur to make him have a good opinion of himself, will soon, I dare say, acquire his commanding manner: at present, one sees little more than a kind of reserve, tempered with mildness, but clouded with a little dash of bashfulness. Will. Pitt you know for certain; in his conversation there is nothing of the orator—nothing of that hauteur and suffisance one would expect; on the contrary, he seems very good-natured, and a little raw. I was monstrously frightened at him, but, when I came to talk with him, he seemed frightened at me; so that, if anything should happen to jumble us together, we may, perhaps, be good pax; which, however, is not very likely: for I don't know very well what ideas we are likely to have in common. After beating Miss V——, I have just been beating him, at chess; an inglorious conquest, as he is scarce so much in my hands as I am in yours. * * * * Finding he [Pitt] had no chance with me, he complained of its hurting his head, and gave it up immediately. Towards the close of the evening, Lord Chatham gave me a challenge. I accepted it. From something that Pitt had said, I expected to have found him an easy conquest, especially as there was something seemingly irregular in the opening of his game; but it was a confounded bite; for I soon found his hand as heavy over me as I ever have felt yours: in short, he beat me shamefully, and the outcries I made on that occasion were such as would naturally convey to other people a formidable idea of his prowess.—*Letter to George Wilson*, 1781.—x. 100-104.

CONNEXION WITH LORD LANSDOWNE.

Some weeks had elapsed, when the visit to Lincoln's Inn produced one of some minutes to Shelburne House, and *that*, one of some weeks to Bowood. This had not lasted many days, when the purpose of it, or at least one purpose, was declared to me. A scene took place, the remembrance of which is, at more than forty years' distance, as fresh in my mind as if it had been but yesterday. The rest of the company used to sit down to supper: I not. A little before they repaired to the supper-table, I used to retire for the night. In my way was a room, on a table in which, the

guests used to receive or deposit the lights they had need of in passing to and from their several apartments. Repairing to it one evening for my candles,—in the act of taking them up, I was met by the Master of the House, with those which he came to deposit. "Mr Bentham," said he, candles in hand—"Mr Bentham," in a tone somewhat hurried, as his manner sometimes was, "what is it you can do for me?" My surprise could not but be visible. Candles still in hand—"Nothing at all, my lord," said I; "nothing that I know of: I never said I could: I am like the Prophet *Balaam:* the word that God putteth into my mouth —that alone can I ever speak." For discernment he was eminent; for quickness of conception not less so. He took this for what it was meant for—a declaration of independence. He deposited his candles; I went off with mine. If by this rencontre any expectation of his was disappointed,—neither his kindness, nor the marks of his esteem, were lessened. Some years after, more than once did it happen to me *to do something for him.* But, so it happened, it was always in pursuit of my own views of things —in the pursuit of the *greatest-happiness* principle; and whatever was done, nothing did he know of it till after it was done. —i. 249.

LORD LANSDOWNE AND HIS NOMINEES.*

In the name of God, my lord, what are these shadows for which you are sacrificing everything and everybody? What in the scale of politics can be the weight of a parliamentary interest, as far as mere members are concerned, of which the sole constituent elements are as many votes, neither more nor less, as three seats can purchase: for Lord Wycombe's is not yet at market; he is not yet called up nor chosen for a county? But let all possibilities of every kind, and even impossibilities, be taken for realities, and you have four seats. Four seats are four votes: and let the prospect of these four seats give you four votes more to retreat to in case of a repulse from others; though, as often as a repulse actually happens to take place, for instance Mr Baring's, the number is diminished, as the same seat will not hold two men at the same time. Call them *eight:* if you please, multiply them by ten, and call them *eighty:* what, upon the face of God's earth, are you to do with these eighty votes? What one single point

* From a Letter to Lord Lansdowne in the year 1790.

can you hope to gain by it? Is it in the power of eight or of eighty votes to make you minister, or to keep you minister, when the gods have made you so; or so much as to keep your head from the block, were they to give their own instead of it? There are, I take it, two plans for carrying things in parliament; *per capita* and *per stirpes*—doing it by numbers, or doing it by weight. The plan *per capita*, though rather a difficult one, has been said, I think, to have once been pursued by I forget which minister, to keep himself in; but for a man who is not minister to get himself in by pursuing the plan *per capita*, and that upon the strength of four actual votes, and as many possible ones, is what, I must confess, I should not have thought of. Two things, and two things only, can either put or keep you in: king's favour, and weight of reputation. For the king's favour, if it depend upon such conditions, you have full license from me to make every sacrifice. I require of flesh and blood no more than flesh and blood are equal to. Lay all your principles at his feet. Send both sets of us packing, the ins and the outs, with Lord Wycombe into the bargain. Surrender your boroughs to Lord Hawkesbury. But will the king's favour be governed in any shape by your four or your eight votes; or rather by the difference between your four votes, which you are sure of, and your eight, which is the utmost your four can give? Are your four or your eight votes, then, any better security for the requisite quantum of reputation? As to mere personal reputation, that is equally out of the question in any case. The plan for weight of reputation in parliament is the plan *per stirpes*. This was the plan you appeared formerly to pursue: and personal inclination and politics went at that time hand in hand. Dunning, I think I have understood from you, you had an affection for: Townshend at any rate; and I suppose Barré at one time. Dunning, though a narrow-minded man, and a mere lawyer, was a most able advocate; and, I daresay, drew a considerable *stirps* after him. Townshend was of use to you in the city. I believe at one time he governed it. Barré, though he knew nothing, was a good party bull-dog, barked well, and with great imposition and effect, where nothing was necessary to be known. This was acting *per stirpes;* and having a party, and having a piece at least of a great state engine, though, if you had got a whole one, there was not a man of them all that had any idea of any use it was to be put to, or of any good that was to be done with it. To the herd of statesmen power is its own end: by the dignified few it is regarded only as a means to an end. There have been times when I have had the pleasure of seeing

your lordship ranking yourself among those few: I wish I could say always. You had then, at that time of day a Shelburne party, one which, whatever were the subjects, was the more honourable to the head of it, as he reigned alone. A party which, by mere weight of reputation, told in the balance against the great aristocracy of the country. It was then, as they say at cricket, Shelburne against all England. In comparison, upon the present plan, or rather no plan, what is the party come to now? In the House of Commons there is not a grain of reputation belonging to any one member of it below the head. It is the old story of the Colossus, with the head of gold and legs of clay. It is all head and no body: the figure we see at the puppet-show; below the head, there is not a grain of reputation to be found; what the Rump Parliament was in comparison with the Long Parliament in its glory. I beg pardon of the Rump; at that time of day, wherever it was not admired, it had at least the honour of being hated to a degree which it could not have been if it had not been feared. Here it is pure derision and contempt. I speak feelingly—I have a right to do so; its humiliation is mine—is still worse humiliation to me.

As to the present rump of the *ci-devant* Shelburne party, the curious thing is, that there is nothing I could say to you of their insignificance in which you have not gone before me. It is not my opinion of them I am giving you, but your own opinion, repeatedly and most explicitly declared, and that to me. In the ordinary course of things, it is a satisfaction to a man where he finds his own judgment of men or things confirmed by the public voice. This satisfaction, if such it were in your case, nobody need wish to possess in a higher degree than you do. It is singular enough, but no less singular than strictly true, that from the time your choice was known, to the present, I have not been in a single company, your own particular friends excepted, (for none of us confer even with one another about such matters, or sit in judgment together over you,) not a single person have I seen, who has not obtruded upon me his wonder at your choice. A few, whose degree of familiarity admitted of such discourse, went so far as to express their wonder at not finding me in the number; but whether I, who am out, was alluded to or no, there was but one voice with regard to those who are in. "How came Jarvis to be pitched upon, of all people in the world? a very good man on board of ship; but what is he to do, or what did he ever do, in Parliament?" "What? of all men in the world, could he find nobody but Jekyll? How could he think of such a man as that

for Parliament!" "Put Jekyll into Parliament! it is quite a burlesque upon Parliament the very idea of it," said another man, in so many words, with abundance of details to the same effect. With others, the last choice was matter of particular surprise; for I found he was understood to be a dull man, and that even by dull men,—by men who neither had, nor ever pretended to have, an opinion of their own; and only spoke, as they could only speak, from his general character in the profession. Nor, in all, was there anything of party or personal dislike; among people of all sorts and characters and parties, I found but one and the same language. * * * * Insignificant as they are, it would be something if they were yours: obsequiousness might make some amends for ignorance and inefficiency: but another curious thing is, that they are no more yours than they are the king's, or Pitt's, or Fox's. Your men? Could you find three men in the House that were less so, or less solicitous to appear so? They your men? You are their man, if you please: but in what sense any one of them is your man, except by vouchsafing to sit now and then in the seat you have given him, I should be curious to know. So much as to principles. Whether they are yours or no, for the purpose of being let out to private jobs, such as the Duchess of Rutland's, for instance, I cannot pretend to say. But if they are, what is that worth to you? What satisfaction or advantage did you get, for example, in that very instance?

The use of a practising lawyer is the having a man who, besides whatever knowledge he may have in his profession, has studied speaking,—a man who, having no opinion of his own, is ready to say, upon all occasions, whatever is put into his mouth. His business should be to catch your opinions, and argue from them, in and out of the House, as he would from his brief. The seat you give him is his retaining fee; if he is not your *âme damnée*, he is a rebel and a traitor. A man who is ready to prove black white for anybody for a guinea,—is it for a man like that to have a will or an opinion of his own, against that of a man who gives him what is worth £4000?

In the House, members are supposed to speak the sentiments of their electors: everywhere else they are supposed to speak the sentiments of the borough-master who puts them in. Your members, if ever they open their mouths, whose are the sentiments they will speak? Yours?—no more than they will be those of the people of Calne or Wycombe. They speak your sentiments? They neither would be able if they wished it, nor would if they

were able. They speak your sentiments? You will scarce venture to speak your own sentiments when these men are by. When the beginnings of the French Revolution were on the carpet at Bowood, you scarce durst own your good wishes on its behalf; while Jekyll, who has, in general, so many good jokes, was exhausting himself in bad ones to endeavour to make it look ridiculous.—x. 235-237.

SPECIMENS OF FAMILIAR CORRESPONDENCE.

Lord Lansdowne has trumped up a story about certain songs having been asked for by Miss F. Five times was the number mentioned, which consequently requires five letters. Being taxed with fiction, he unloaded his pockets before me of their contents, including about fifty letters, among which were to have been the five, or some of them; but is unable to find one. It is an old manœuvre, and will not pass upon anybody, not even upon me. The notice, however, having been given in form, with threats of disgrace in case of neglect, I must act as if it were true. Well, here it is—the same song—it has cost me hours after hours—pieces of days, as many as there are days in a week at least; and what will anybody be the better for it? When you ordered it, you did not want it; and now you have got it, you won't make use of it. I am recommenced wild beast, and growl as every wild beast will do when you touch his chain. Not a syllable did I get from you before, nor shall I now,—not so much as the direction of a letter; and the notice, supposing it genuine, was to come in *circumbendibus* through two different channels. Here is the song, extracted from me in the most dexterous manner; and not only that, but paper enough to singe a goose with, without anybody committing himself. I don't like such sort of dealings, not I. I have read Cocker's Arithmetic,—I like to see a debtor and creditor side fairly balanced,—needs must when —— drives. Peace and quietness are my aim; but Lord L., who knows the necessities of an election, and who will never let me alone, insisted upon having, not only song, but letter; so you have him to thank for it. The old story—providence in plenty; but all of it on one side. The ice becomes the colder, I think, when the three Dianas get together: they are like snow, saltpetre, and sal-ammoniac: there is something Greenlandish, too, in the air of that old castle. Hear me, madam! If I don't get something better, by return of post, than a note in solemn form, and that from one hand only,

the whole correspondence goes, the next day, to, I need not say where—I leave to imagination to conclude the sentence. I thought we had got our *quietus* when the metaphysical disputations were adjourned to Lansdowne House ; but fate would have it otherwise. My brother, who is too good to you, talks of sending you a Russo-French song, music composed, and given him by a Countess Golofkin, or Go-lovekin, as you may be pleased to call her,—which said song Miss F. will neither have the industry to learn, nor the punctuality to acknowledge the receipt of. I send it rather as a literary curiosity than for its excellence ; but though his *Visho-blagorodinship* gives a toss of his head, and observes that such accomplishments there exhibited are common among the ladies of that country, he found something original in it, and not unpleasing ; and, at any rate, it is easy, which is no bad recommendation in this idle world—curiosity I call it, speaking as an Englishman. But it must be copied out first, which will give occasion to the said Miss F., after consultation with Miss V., and consent given by beg of Lady W., to Miss E. in her next epistle to Lord Henry, to desire him to tell Mr Favre to intimate her wishes to Lord Lansdowne, that his lordship would have the goodness to send somebody to Mr Bentham that he may remind his brother of it. (1791.)—x. 266-267.

When will the unreadable letter get a reading? Heaven knows. If I was afraid to look at it at first, the two angelic ones that succeed it have made me more and more so. Come—you shall understand exactly how it is with me. Did it never happen to you to find yourself half awake after a pleasing dream, still wrapt up in it, afraid above all things of losing it, keeping as still as a mouse, and staving off to the last moment the operation of turning on the other side, for fear of putting an end to it. Who would change a pleasing illusion for an unpleasing reality? —I would not, I am sure.

Do you know why it was Jephthah sacrificed his daughter? Was it that he wanted to get rid of her? No such thing : there was not a better-behaved young woman in the whole parish, and she was the only string he had to his bow. Why then? Because he had said he would ; and if he had not been as good as his word, he would have been accused of inconsistency, he thought, and want of perseverance, in all the Jerusalem newspapers. He wished his tongue had been cut out a thousand times over, rather than he had said any such thing : and yet you see, poor Miss Jephthah went to pot, notwithstanding. Had there been such a person as a pope in the neighbourhood, he would have gone to his shop and

bought a dispensation : but popes were not as yet invented in his days.

Some historians tell a story of Curtius, that when he was got to the edge of the gulph, and saw how deep and black it looked, his heart misgave him, and he began casting about to find excuses to get out of the way of it. They had given him a wrong horse : if he jumped in with this it would break a set, he would just go to the stable and change him, and come back again ; unfortunately some boys that were standing by began to set up a hiss, so he set spurs to the poor beast, and in they went together.

When Sir Thomas Moore was going to have his head chopt off, and bid Jack Ketch not meddle with his beard, as that had not committed any treason, do you think it was a matter of indifference to him whether his head was off or on ? I question it. The case was, he had got a trick of talking in that manner : and it was as natural to him as to ask what o'clock it was, or to observe it was fine weather.

I remember when I was a boy, and had occasion sometimes to pass through a churchyard of a night, I used to set up a singing : Was it from high spirits ? The deuce a bit : on the contrary, my heart was going pit-a-pat all the while, and I fancied I saw a ghost perched upon every tombstone. (1792.)—x. 276.

I am growing more and more savage every day. I begin to moralise, and talk about the sparks flying upwards. I have known dogs that, if you spoke to them and offered them a bit of the breast of a chicken, would turn and growl at you.—I am exactly in this case. It was but t' other day I spoke to puss, the only person I ever see, in so civil a manner ; she went into hysterics. I feel my forefeet drawing nearer and nearer to the ground,—as soon as the grass is got up a little, I shall take to eating it. Does Lord H. propose to have a menagerie when he goes to —— ; I forget the name of his place,—I believe it's Winterton ? If so, and the dens are not all engaged, put in a word for me, pray, and bespeak one of them for me, to keep me in. He need not put himself to the expense of a chain, I have had one by me these ten years. I won't bite you : indeed I won't, though you should put in a hand and give me a pat now and then through the grate. If anything could keep me upon my hind legs a little longer, it would be the sight of a few lines now and then, such as those that were written to the jewel-man ; but put me in the inside of the letter, so that nobody may see them but myself.—x. 188.

* That bread is dear—that I have none of it to eat, nor have had for a course of years, are unhappy truths, none of which can be any secret to your lordship. In the meantime, as is the custom with people in distress, I endeavour to support my drooping spirits by the brightest prospect I can figure myself of better times. I had once, may it please your lordship, a French cook, who quitted me with reluctance, and whom her importunities have prevailed on me to say, I would take her back again, should that Providence which supplied the late Dr Squintum, of reverend memory, with leg of mutton and turnips, vouchsafe, at some future period, to grant me anything to cook; in the meantime, I should be glad to send her out anywhere, where she could pick up a few crumbs of science, as a man who finds himself unable to maintain his horse in the stable the whole year round, is glad during a certain part of the year to pack off the beast to a salt-marsh, or a straw-yard. Your lordship's kitchen has ever been regarded by the best judges as one of the richest pastures in the kingdom for the sort of cattle I am speaking of: and could I be so fortunate as to obtain from your lordship's kindness, and from the patronage of your lordship's chief cook, free *ingress*, *egress*, and *regress* for the same, for, in, to, and, upon the said pasture during the day, (for it is not necessary that she should be *levant* or *couchant* thereupon,) my present distresses might, by a happy metamorphosis, become the fruitful sources of future advantage. She is not altogether destitute of that measure of science attainable by the superiority of her sex, (a remark which I insert for the purpose of preventing this letter from straying into female hands,) and, upon great occasions, such as that of Camacho's wedding, or any other wedding, might not be altogether unworthy of supporting the train of one of your lordship's junior kitchen-maids.

Should your lordship happen to possess interest enough, through any channel, however indirect, such as the one I have made bold to allude to, I will not permit myself to doubt of its being exerted in my favour, and with prevailing efficacy. In the utmost severity of my distresses, I have, through the kindness of neighbours, been preserved from absolute want in regard to all the necessaries of life, my baker and butcher having humanely joined with a compassionate barrow-woman, at the end of the lane, in supplying me, every Lord's-day, with a shoulder of mutton,

* Addressed to Lord Lansdowne, recommending to his protection a servant whom Bentham at the time could not afford to keep.—*Ed.*

St. Albert's College Library

supported upon a trivet, and forming a dripping canopy, distilling fatness over a mess of potatoes sufficiently ample to furnish satisfaction to the cravings of nature during the remainder of the week. Should some prosperous and scarce promisable turn in the wheel of fortune transform, at any time, the shoulder into a leg, and set the deep-rusted spit to retrace its once accustomed revolutions, what an addition would it be to my happiness, on some auspicious day, to present your lordship with the emanation of culinary science reflected from your lordship's kitchen, and offer an apposite, however inferior, tribute of gratitude on the board, as well as from the bosom, of one who has the honour to be, with everlasting respect, my lord, your lordship's most obedient and most humble servant,

THE DISTRESSED OCCUPIER OF QUEEN SQUARE PLACE.

—x. 314.

January, 1791.

MY DEAR WILSON,—Nothing can be more judicious than the advice you give me to write readable books: to show my gratitude, suffer me, who am your senior, to treat you with another. Get business. Don't complain for this time that you have been preaching to the winds; you have been preaching, you see, to an echo: I don't mean one of your vulgar echoes, but such a one as they have in Ireland, which, when a man says to it, "How d'ye do?" answers, "Pretty well, I thank you." What! your notion is, then, that I make my books unreadable, for the same reason that asses stand mute—out of pure sulkiness. As to the book in question, there will be another obstacle to its general circulation here, which is, that it won't go to the booksellers at least for a long time, if ever.* Be listened to in France? No, to be sure it won't. But you seem to have forgotten, that it is the continuation of a work begun before that matter had been ascertained. As to the unpopular form, it was determined by the popular occasion. If I give it up, I am fickle: If I go on with it, I choose a form that is unpopular, and write books that are unreadable. So you have me either way, or to speak more intelligibly, *quacunque viâ datâ*. If you have got a receipt for making readable books, please send copy thereof per return of post, together with a ditto of your own making for a pattern.—x. 246-247.

* In allusion to the work on the Tactics of Political Assemblies, quoted *supra*, p. 105.

17*th October*, 1803.*

Marche routé of the Queen Square Place Volunteers.—Set off on Tuesday—reach Birmingham on Wednesday evening.—On Thursday evening or Friday morning, retreat to Hatton. There storm the vicarage, giving no quarter—after committing ravages indescribable, evacuate the place on Sunday morning early—continuing the retreat to Oxford. Take up quarters there, Monday, and possibly Tuesday.

None of your *Alcandrumque Haliumque, Noëmonaque Prytanimque*, under the notion of helping to *désennuyer* the travellers; for what is it that we go forth for to see? Answer.—Parr, and Parr only; a reed lately shaken by the wind, but now, we hope, stout and strong again. Time, according to my estimation, not by a great deal enough for that; but more at present cannot be found.

Stay the hand of the Vicar's wife, and say unto her—Slay no fatted calves—the elder hath outlived that branch of the lusts of the flesh, not to speak of others. The younger? he hath never known it—step not, even although it be but a span's length, out of the path to which thou art accustomed; and remember we are Rechabites. Is it not written,

Ουαι τευφης παρα σοι χρηζομαι αλλα μονης.

Not improbably, a boy sent to me by Mr Strutt at Derby, from a place of his brother's called Belper, six miles from thence—boy's name unkown—age about twelve—may inquire for me at the Parsonage, either Friday or Saturday.

Should death have disposed of me in the meantime, pay the boy his expenses thither and back again, I pray thee, opening the letter he will possibly have for me, and bring your action against my executors and administrators."

Again:—

Δυσταξι!!!

Your friend Homer, in his quality of *vates sacer*, added to his gift of poetry a spice of the gift of prophecy. One proof of it is, that, foreseeing the provocation you would one day give me, he provided me with so apposite a *nom de guerre* to belabour you with. As for my name, if it be not in the Iliad, like yours, *totidem verbis*, it will be found there *totidem literis*, which, in these cases, (you know,) is quite sufficient. Have at you, then, once

* Addressed to Dr Parr. The reader will recognise in this letter a very happy adaptation of the literary habits of the person to whom it was addressed. —*Ed.*

more, Ω Δυσταξι ! ! ! There you have it again, up to your very gizzard.

When as the prophesied, by the prophesied—Oh, thou false prophet! by thee prophesied—5th of January approached, Herbert [Koe] and I began counting the hours. Phœbus's horns had scarce reached their first bating place, when I detached him (not Phœbus, but Herbert) in quest of you to the fatal place, the Carian Street,—to the *campos ubi Troja fuit*,—from whence he brought me, alas!—(the alas! should have come earlier: pray, put it in the proper place)—the beggarly account of empty boxes! When a disappointment falls on me,—to spite it, in return for its spiting me,—I endeavour to laugh it off as well as I can. So accordingly I did, and by these presents do, by this: but in serious and sober sadness, it was a grievous one. Ask Herbert else, when the next *fatalis dies* comes (the 5th of May, is it not?)—ask him, who, being the younger, should, according to the old rule, be the honester of the two—or rather, clap your own sacerdotal hand to your own sacerdotal gizzard, and ask that.

Nor yet art thou the only slippery card, on which it has pleased the *vates* to exercise his prophetic talent. In a cover, franked by my old friend Phil. Metcalf, (one of Sam Johnson's executors,) I sent to Hatton, as per order of your reverence, in *usum του Φοξου*. two months ago, Citizen Dumont's letters. In all this time Romilly has neither received nor heard of them: a fortnight, I think, or thereabouts, was the time indicated. He has sent Mercury to me express upon this single subject; and it is under the spur of the god that I write this to you. C. Fox, if Fame is to be believed, has a turn, or head as men say, for forgetting things,—at least such little things; and this is what his friend Homer made known to the world, though it has never been found out till now, (for the best prophet, I need not tell you, is nothing without a good interpreter,) in the line which beginneth, Φοξος ε 'ν εφαλην, which was what the old man in the *Spectator* had in view, when, shaking his own head, he cried out to his son, "Ah, Jack, Jack, thou hast a head, and so has a pin." How clear an insight must the bard have had into futurity, when the two most illustrious characters of the present age could thus be designated even by their very names! No contortions, no translations necessary:—not Ισος, but Παξις; and in the case of a spot in the sun, Δυσταξις:—not Αλωπηξ, but Φοξος. The name of Φοξος, in particular, is become so familiar to him, as to have passed already, you see, into a proverb. How deplorable the hallucinations of the scholiasts and lexicographers, who have mistaken the proper name for an adjective, and ima-

gined a physical noun to affix to it. If the case were among those in which error finds an excuse in invincibility, they might perhaps take the benefit of it,—such of them, I mean, whose respective flourishing times have been anterior to the present age,—for nothing less than a prophetic view of the subject could have set them right; and well they might plead, that the spirit of prophecy never descended upon them. But I am in your reverence's judgment, whether in a case of prophecy, and errors thereupon assigned, invincibility be a plea pleadable.

This puts me in mind of a system which, like the *Alliance* and the *Divine Legation*, had a considerable run when it first came out; but which, notwithstanding the ingenuity of it, and the high reputation of the author, was never made out in such a manner as to exhibit itself clear of all objections to my weak eyes. I mean Dean Swift's hypothesis about the derivation of the Greek from the English language: a proposition which, after all the proofs that were collected in support of it, did not appear to me to be established upon any more solid grounds, than Dr Vincent's hypothesis about the Greek verb—"*Alexander the Great*," not being deducible from "*All eggs, under the Grate*," or even "*Archimedes*" from "*Hark ye maids*," (and so of the rest,) without considerable violence to language; not to speak of the chronological difficulties which, to my satisfaction, were never thoroughly cleared up.

Compare that hypothesis with—I will not say the hypothesis, for it is a matter of simple observation; I claim no merit in it—the Homeric prophecy. Look at it, you find it all broad daylight: not mere etymology, but actual orthoëpy:—and as for chronological difficulties, here, *ex natura rei*, they have no place.

Dispel your fears, my friend: my inspiration has at length run itself out of breath. Should it find you incredulous, (we are neither of us intolerant,) fear not from me either excommunication or *præmunire*. The worst punishment I would inflict upon you, had I pandora's box, with its whole contents, under my arm, would be imprisonment from the hour of five to eleven in Queen Square Place.—x. 411-412.

Q. S. P. [*Queen Square Place,*] *September*, 1820.*

Dear Sir,—Now that you have taken me under your protection, there are some hopes for me. I am a hard-working, painstaking man: a law-maker by trade—a shoemaker is a better one by half—not very well to do in the world at present: wish to get

* Addressed to Dr Bowring.

on a little: have served seven apprenticeships, and not opened shop yet; make goods upon a new pattern: would be glad to give satisfaction: anything they may be thought wanting in, in quality, should be made up for in cheapness: under your favour could get up some choice articles for the Spanish market: would not interfere with my protector: scorn any such thing: mine a different line: would allow a per centage for agency, if agreeable. A few samples were circulated some time ago by an agent of mine, M. Dumont of Geneva: think they were approved of. He has set up for himself, and got a job there. I let him have some of my tools and materials. He was forced to take in partners. They had been so used to the old way, that they were a little awkward at the new one: they have been coming out by degrees; still it is but up-hill work. He would have had me take the job in hand and go through with it. If I lived, so perhaps I might one of these days, rather than the thing should not be done; but the market there is so narrow. Spain! Spain! there is something like a market! An order from that country would make a man work early and late.—x. 316.

Q. S. P., 11th February, 1823.

Francis,*—I see how it is with you. You don't know where to go for a dinner; and so you are for coming to me. I hear you have been idler than usual, since you were in my service; always running after the hounds, whenever you could get anybody to trust you with a horse. I hear you are got among the Tories, and that you said once you were one of them: you must have been in your cups. You had been reading *High Life below Stairs*, I suppose, and wanted them to call you Lord Burdett. You have always had a hankering after bad company, whatever I could do to keep you out of it. You want to tell me a cock-and-a-bull story about that fellow Brougham. * * * I always thought you a cunning fellow; but I never thought it would have come to this. You want to be, once more, besides getting a bellyfull, as great a man as ——.—x. 592.

* Sir Francis Burdett.

AN OUTLINE

OF THE

OPINIONS OF JEREMY BENTHAM,

ON THE PRINCIPAL

SUBJECTS DISCUSSED IN HIS WORKS.

*** The following Outline is abridged from an Introduction to the Study of Bentham's Works, by the Editor of this Selection, printed in the Collected Edition of the Works.

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AN OUTLINE

OF THE

OPINIONS OF JEREMY BENTHAM.

SECTION I.

THE GREATEST-HAPPINESS PRINCIPLE.

It appeared to Bentham, at an early period of his life, that the Philosophy of human action was incomplete, until some general principle should be discovered, to which the actions of mankind ought all to tend. The way had been so far cleared by the Inductive system of Philosophy. Bacon laid down the grand and general law, that experiment is the means of obtaining a knowledge of what is true; but a question was left to be answered—to what end men, after having achieved the knowledge of what is true, should use that knowledge? It was clear, that though experiment might teach us how to achieve that end when once pointed out, it could not be the means of discovering the end itself; for the very supposal of an end predicates something, not sought after, but predetermined. It was after much thought that he decided that the end in view ought to be the creation of the greatest possible amount of happiness to the human race. The word "utility," was the first shape in which the end presented itself;* but this term left the question "what constitutes utility" an open one. The answer to—what constitutes utility? and the more abstract principle afterwards adopted, were one and the same. That is useful which, taking all times and all persons into consideration, leaves a balance of happiness; and,—the creation of the largest possible balance of happiness—became the Author's description of the right end of human actions. The manner in which he stated his axiom was at first in the words, "The greatest happiness of the greatest number," or "The greatest possible happiness of the greatest possible number;" but as there were here two conflicting elements of extent—the intensity of the happiness and the number of persons among whom it is dispersed, the respective limits of which could not be fixed, the simple expression THE GREATEST HAPPINESS was determined on. He was quite aware that this principle is liable to the imperfection characteristic of all axioms. It was simply, like others of its kind, the closest

* See the Fragment on Government, Works, vol. i. p. 260 *et seq.*

approach to the abstract that could be made by reasoning. Logic could tender it no support; it must itself be the base on which reasoning should rest; and unless in so far as he could obtain admission for it, it must remain unproductive of good.

But it was not simply to the announcement of his first principle that Bentham trusted for its adoption, but to the influence it would have on the minds of his readers when they studied the forms in which he brought it out in detail. And this brings us to examine the extent to which the author lays claim to the merit of originality. It was not the principle itself, that constituted his discovery, but his rigid adherence to it in all his expositions—his never losing sight of it in what he did himself or called upon others to do. He did not say that the world had hitherto been ignorant of such a principle; he found the theory of utility to a certain extent promulgated by Hume, and references to the "greatest happiness" in the works of Beccaria and of Priestley; while something like the Utilitarian Principle is announced at the commencement of the Nicomachean Ethics. He found indeed that it was at the root of all systems of religion and morality; that all codes of law were more or less founded upon it; and that it was, in all places and at all times, an unseen and unacknowledged guide to human action. But he was the first to bring forth this guide, to prove to the world that it should be followed implicitly, and to show that hitherto, from not keeping their guide in view, men had often wandered from the right path. "The good of the community," "the interests of the public," "the welfare of mankind," all expressions to be found in the mouths of those who talk of the proper ends of action, were so many acknowledgments of the greatest-happiness principle, and vague attempts to embody it. There is here an apt parallel with the philosophy of Bacon. Long before his day experiments were made, and thinkers, even in their emptiest theories, in some shape or other looked to experience. Fact was then, as now, the source of knowledge; but for want of an acquaintance with what their source of knowledge really was, men wandered about among vague theories, and Bacon was the first to discover, that wherever experience and the induction from it are lost sight of, there is no check to the errors of thought. In like manner does Bentham show, that, when the greatest happiness of mankind is lost sight of, in the pursuit of more immediate ends, there is no check to the aberration of human action.

There is, perhaps, no better illustration of the operation of the utilitarian principle in minds which are ignorant of, or do not acknowledge its existence, than in the appreciation which Bentham's works have met with by the majority of his readers. His general principle has received few adherents, in comparison with the number who have adopted his detailed applications of it. There is no project of change, or plan of legislative reform, in which he has not kept the greatest-happiness principle in his eye as the end to which it has been adapted; yet there are many who accede to his practical measures, while they repudiate his general principle.* There can be no doubt, that had he contented him-

* Among the various practical reforms suggested by Bentham, the following are instances in which his views have been partially, or wholly adopted by the Legislature:—Reform in the Representative system. Municipal Reform in the abolition of Exclusive privileges. Mitigation of the Criminal Code. The

self with an exposition of his leading principle, instead of giving the world, on so wide a scale, the details of its operation, he would have had far fewer followers than he has: and that, indeed, it has generally been through the influence of his practical adaptation of it, that he has brought his pupils to the adoption of his central principle.

It is a circumstance worthy of remark, that his philosophy met with an opponent even in the extent to which its leading principle was practically admitted. The quantity of utilitarianism that was in mankind, had rooted certain opinions so firmly in their breasts, that they entertained a suspicion of that sceptical philosophy which took them up and examined them, though the examination ended in approval. People lost patience with the system, when they heard its author ask whether theft and falsehood were hurtful to mankind, before he condemned such acts. When it was said that murder, if beneficial to society, would be a virtue instead of a vice, it was indignantly maintained, that under no presumable circumstances could it be anything but what it is—the most atrocious of crimes. That fact was, indeed, one of the most broad and clear cases in which the utilitarianism of the world had made up its mind from the beginning. Almost, in all ages and in all nations, men had leaped at the conclusion without a perceptible interval of ratiocination. It was a startling thing to see so long decided a question called up for trial, and to hear the evidence against it investigated and weighed, before judgment was pronounced, as if there were really room for any dubiety. The feeling was somewhat akin to the popular cry which, in the case of a public and notorious criminal, tries to bear down the calm deli-

abolition of Transportation, and the adoption of a system of Prison discipline adapted to reformation, example, and economy. Removal of defects in the Jury system. Abolition of arrest in Mesne process. Substitution of an effectual means of appropriating and realizing a Debtor's property, to the practice of Imprisonment. Abolition of the Usury Laws. Abolition of Oaths. Abolition of law taxes, and Fees in Courts of Justice. Removal of the exclusionary Rules in Evidence. Repeal of the Test and Corporation Acts, the Catholic Disabilities Acts, and other laws creating religious inequalities. Abolition or reduction of the Taxes on knowledge. A uniform system of Poor Laws under central administration, with machinery for the eradication of mendicancy and idleness. A system of training Pauper children, calculated to raise them from dependent to productive members of society. Savings' Banks and Friendly Societies on a uniform and secure system. Postage cheap, and without a view to revenue. Post-office Money Orders. A complete and uniform Register of Births, Marriages, and Deaths. A Register of Merchant seamen, and a Code of Laws for their Protection. Population Returns, periodical, and on a uniform system, with the names, professions, &c., of individuals. The circulation of Parliamentary Papers as a means of diffusing the information contained in them. Protection to Inventions without the cumbrous machinery of the Patent Laws.

The following are among those of his proposed Reforms, which have received only a very partial, or no legislative sanction, but which have, each, a considerable and respectable class of supporters:—Free Trade. National Education. The Ballot. Equal Election Districts. Local Courts. A uniform and scientific method of drawing Acts of Parliament. Public Prosecutors. A general Register of Real Property, and of Deeds and Transactions. Sanatory Regulations for the protection of the public health, under the administration of competent and responsible officers. The circulation of Laws referring to particular classes of society among the persons who are specially subject to their operation.

beration of the judicial tribunal, and is scarcely content when the proceedings end in punishment, because the very weighing of evidence, in such a case, seems to be a trifling with truth which frightens people into the belief that it is possible justice may be got the better of. It was a leading feature of his system, that nothing should be taken for granted, and that every link in the chain of inquiry should be examined. In morals as in mathematics, he considered it necessary to have clear views of the simpler propositions of a series, as a preparation for the proof of the more complex. It was in the neglect of this rigid system that he generally found the source of popular errors in morality. Though men admitted the evil effect of murder, they had not followed the utilitarian principle so closely as to see much mischief in condemning a man to death according to law, when a smaller punishment is sufficient: and while theft encountered condemnation almost universal, the number of those who carried out the principle to the condemnation of the wilful accumulation of debts, which the debtor knows he has no chance of paying, was small. In both cases, however, the proof of the simpler proposition was an introductory step to the proof of the more complex.

Having established the pursuit of the greatest happiness as the leading object which all men should hold in view, the next step was, to find what principles there were in human action to be made conducive to this end. In examining the real state of the actions and impulses of mankind, and going back from particulars to the most general principle of action, the philosopher came to the conclusion, that every human being, in every action which he performs, follows his own pleasure. He had to deal with a multitude of prejudices, in his use of this term, but he would perhaps have hardly propitiated his opponents if he had chosen a new one. The very universality of its individual action was against it as a general term; for every man felt so strongly that what was pleasure to his neighbour was not pleasure to himself, that he revolted against the application of the same word to qualify motives which appeared so distinct. Among a large class of persons, the expression, "the pursuit of pleasure," had inherited the bad reputation which has popularly attended the doctrines of Epicurus. It was connected in some way with sensuality and mere corporeal enjoyment, and stood in opposition to those objects and pursuits which the better part of mankind hold in esteem. In the popular discussions on this subject, there is generally a want of observance of the distinction between pleasure as attained, or, in one word, happiness, and pleasure as an object sought after. The latter is an unknown quantity—the former presents us with the arithmetical results of the experienced pains deducted from the experienced pleasures. Many a man makes himself unhappy; but no man pursues unhappiness, though one may be very unsuccessful in his pursuit of happiness.

Perhaps it may serve the purpose of farther explaining the sense in which Bentham used the terms happiness and pleasure, to compare them with those words which more nearly approach to them. The term nearest to being synonymous with pleasure, is *volition*: what it pleases a man to do, is simply what he *wills* to do. By considering it for a moment in the light of mere volition, we separate it from the notion of actual enjoyment—that popular acceptation which is most likely to lead

us astray. What a man wills to do, or what he pleases to do, may be far from giving him enjoyment; yet, shall we say that in doing it, he is not following his own pleasure? A man drinks himself into a state of intoxication: here, whatever may be the ultimate balance of happiness, people can at least imagine present enjoyment, and will admit that the individual is pursuing what he calls his pleasure. A native of Japan, when he is offended, stabs himself to prove the intensity of his feelings. It is difficult to see enjoyment in this case, or what is popularly called pleasure; yet the man obeyed his impulses—he has followed the dictate of his will—he has done that which it pleased him to do, or that which, as the balance appeared to him at the moment, was, in the question between stabbing and not stabbing, the alternative which gave him the more pleasure.

Those hasty acts, the result of sudden impulse, which one afterwards repents of having done because they militate against ultimate happiness, are the operations which people can with least facility ally to the pursuit of pleasure. They cannot imagine a balance struck in the mind in favour of pleasure, in cases which, by their results, and the feeling which the actor afterwards expresses regarding them, have evidently been so much the result of want of consideration. But, unless it be denied altogether that will has any influence in such cases, it cannot be denied, that what the man wills to do is that which gives him, at the moment, greater pleasure than abstaining from it. The acts which are called rash —those which are the effects of sudden volition, are notorious for their malign influence on happiness. The imperfection generally attributable to hasty operations is perceptible in them. By too rapidly making up his mind on the question what is for his pleasure, the hasty man makes a wrong decision, and does that which, in the end, brings him a heavy balance of misery. Sudden acts may be fortunate, but they are not to be calculated upon as the most conducive to happiness, and the suppression of the habit of doing them will be found to be one of the ends of morality. A gambler may make himself rich by a lucky turn of the dice; but the best chance of permanent opulence is in favour of the man who practises a rigid system of industry, honesty, and self-restraint.

The terms, *choice* and *preference*, are useful in explaining the meaning of the word *pleasure*, as used by Bentham, though they are not so completely equivalent as *will*, being only employable where more than one thing is presented to the will, each with its own inducements. Between two courses, which a man has before him, he adopts, from pique or disgust, that which is foolish, wicked, detrimental to his own happiness, and he repents of it afterwards; still, at the moment, it was not less the object of his choice, his preference, his will, his pleasure.

It is in the cases where the instruments of palpable enjoyment are given up by one human being for the sake of the happiness of others, that its common popular acceptation renders the use of the word pleasure in its philosophical sense least commodious. He who sacrifices self for the good of others will be said to yield to the dictates of duty, of generosity, of humanity, of benevolence, of patriotism, as the case may be; but generosity revolts against attributing to him the selfish motive of the pursuit of pleasure. There is no harm—indeed there is much good—in the terms of eulogy which are applied to the motives of such actions. Bentham was not less conscious of their excellence than other moralists;

but in looking at their direct and immediate motive, he found it the same one ruling principle—the pursuit of pleasure—the doing that which it pleases a man to do—the doing that which volition suggests. The misunderstanding of his opinions arose from the defect already stated—the inability of men to see sources of pleasure to others, in things which were not sources of pleasure to themselves. When Howard found himself possessed of an unappropriated sum of money, the first use for it that suggested itself was a pleasure trip on the Continent; but on second thoughts he devoted it to the accomplishment of his benevolent schemes. In popular language, he was said in this instance to have made a sacrifice of his pleasure or of his enjoyment; and in the case of an ordinary man, had Howard possessed over him the power of appropriating to the improvement of prison discipline, the money which the owner of it had intended to spend on travelling, and had he so exercised his power, that owner would probably feel that Howard had deprived him of a pleasure. But the source of enjoyment and the will to choose it were fitted to each other, and placed in one mind; and who shall say that the choice he adopted was not that which gave Howard pleasure? *

Having found the psychological fact, that each man in all his actions pursues his own pleasure, and laid down the rule that the right end of action is the increase of the sum-total of the pleasure or happiness of mankind, the next question came to be—how the pursuit could be brought to bear upon the end? and he decided that, as a general rule, the happiness of the community would have the greatest chance of enlargement, by each individual member doing the utmost to increase his own. The conclusion, that the pursuit of pleasure should thus be deliberately set down as the proper end of life—the great duty of man—seemed startling to those whose notions of felicity were drawn from its most palpable, but least potent department, sensual gratification. But here again, as in the other departments of his system, he appealed to the conduct of all men—to the views of all moralists—as illustrations that he was founding no new system of morality, but merely clearing up that which had, with more or less of deviation, been acted upon and taught in all ages. The first great point to be kept in view is, to distinguish between the pursuit of immediate pleasure, and the doing that which, probably at an expenditure of present pain, will have the effect of securing a balance of pleasure when the whole transactions of a life are wound up. People call the former the pursuit of pleasure—the latter they call the practice of morality. The gambler, the spendthrift, the drunkard, adopt the former course. Heedless of consequences, they snatch at present enjoyment; but before the end of their days the balance of pleasure has turned fearfully against them. The upright, industrious, abstemious man, has braced himself to resist these allurements. *He* has struck the balance accurately at the beginning, and at each passing moment of temptation he keeps it steadily in view. When the opportunities of fleeting enjoyment start up before him, he says, "No; I will pay dearly for it hereafter:" it will conduce to his pleasure afterwards that he has avoided it; and, reflexly, to avoid it is pleasure to him at the moment. When his days

* That this choice characterized an order of mind of which Bentham had a due appreciation, will be admitted by all who read his beautiful eulogy on the Philanthropist, as printed in the present selection, p. 332.

are ended, the book of life shows a balance of pleasure—an increase to the stock of the happiness of society, to which he has been an ornament and a benefactor by the acts which have conferred felicity on himself. Moralists and divines may disguise it as they will, but the balance of happiness is always the reward which they hold out for good actions. Be temperate—you will secure health and respect. Make your expenditure meet your income—you will avoid shame and embarrassment. Be liberal—you will have the good-will of mankind, their praise, and their kind offices. When the teacher looks beyond the world and opens up motives on which it is not necessary here to dwell, (for Bentham did not discuss religion in itself, but merely spoke of it as one of the influencing engines of society,) the appeal is still the same, and happiness in a future state is held out as the reward of virtue here.

In the mere discovery that it is a search after the greatest attainable amount of happiness, the rule of morality is far from being developed. The difficult problem, What line of conduct will be most conducive to happiness? has to be worked out. The Author, however, believed that he had done much to facilitate this operation by laying before people the ultimate, in place of the secondary objects of morality. He admitted that all the world—both the moral and the immoral part of it—were searching for the same desideratum; but he maintained that they would be more likely to find it, if they did not forget the object of their search by having their attention distracted by the various matters they encountered on their way. He found, that in the search two distinct classes of mistakes are made. Some act hastily, following the dictates of present enjoyment without weighing the consequences; these are the immoral men. Others, after a laborious investigation, divulge schemes, which being acted on, leave a balance of pain greater than the pleasure; these are the propounders of false moral doctrines. The object of morality and moral discussions is to show the former the folly of their ways, and to assist the latter in their attempts to discover the right path. It would be a very palpable mistake to presume that it was the Author's meaning that immoral practices always bring their punishment with them in this world. The problem he works out is one of chances; not of direct cause and effect. He maintains only the possibility of discovering a moral rule, the pursuit of which will give the individual the best chance of leading a happy life.

It is one of the evils of the imperfection of language as an accurate vehicle of thought, that the full meaning of what is involved in Bentham's views regarding the pursuit of happiness cannot be comprehended by any species of simple exposition: the student will know them best by examining them, inductively as it were, in the various works in which they are practically applied. Among the elements of the greatest-happiness principle, or of the utilitarian principle, he will find characteristics very different from that pursuit of sensual pleasure which popular prejudice attributes to the one, or that hard limitation to what are called the immediately useful and rejection of the ornamental objects of life, attributed to the other. There was no one more fully endowed with the feeling, that everything which lifts the soul of man above the clod he treads, and purifies its elements of enjoyment, tends to the fulfilment of that end which he had set before himself as the right one. The progress of a system of intellectual instruction, the most refined and elevated in

its nature which the position of the individual could admit of, was one of his favourite schemes—one towards the practical adoption of which he laboured with a zeal worthy of better success. The gradual removal of the pupil's mind from contact with those objects and practices in which man shows the greatest amount of his animal, and the least of his intellectual nature, was the peculiar moral benefit he anticipated for his system. He was a zealous admirer of what may be called intellectual discipline. He conceived that the minds of youth, in almost all grades, and under all systems of education, were allowed too much relaxation from the bracing influence of severe thought. If it had been in his power, he would have made every man a thinker; he would have taught all men to meditate on the ends of their actions; to check their propensity towards immediate enjoyment, to govern their passions, and to look into the future. *

Those petty sacrifices of selfish inclination, for the pleasure of others, which constitute the rules of good-breeding, politeness, and courtesy, formed part of his system of morality. These are not important acts, taken individually; but collectively they are the materials of which much of the happiness of social man is created. He was not deaf to the greater calls for admiration made by that species of disinterestedness, which makes large sacrifices of what is called personal enjoyment, for the good of others. He looked on the disinterested benefactors of their species—men rarely occurring, and highly gifted, as those whose greatest happiness was centred in the consciousness of doing good to mankind; and he conceived it right and just that the acknowledgment of their services should be amply given. But these were not the men for whom he could cast his scheme of morality. Greatly as they raise themselves, in the unapproached grandeur of their minds, above the people of the every-day world, it is for these latter that codes of morality must be constructed; it is to the size of such minds that they must be fitted. It is useless to ask whether it would be better that men should find their chief enjoyment in something higher than the usual objects of ambition; suffice it that experience shows these to be the ruling motives, and therefore the instruments with which the moralist must act. He who addresses himself only to Howards and Washingtons, leaves several millions of well-intentioned men, with narrower minds and lower objects of ambition, unguided. The economy of the world would be different from its present constitution were it otherwise; and it is not inconsistent with an appreciation of disinterestedness, to hold that mankind would not be advanced but deteriorated, if all the shopkeepers deserted their counters to revolve schemes for the public good. The produce of the selfish industry of commonplace moral men and good citizens, is the fund with which philanthropy deals on an extensive scale. Aggrandizing, money-getting Britain, gave twenty millions for the emancipation of slaves: how could such an act be accomplished by a nation of Aristideses and Epictetuses?

The main difficulty which has been raised against the greatest-happi-

* See the plan of a Chrestomathic System of Education, in the Works, vol. viii. p. 1 *et seq.* See also the Rationale of Reward, in vol. ii. p. 192 *et seq.*: where the different beneficial objects of encouragement are discussed. See also vol. i. p. 569 *et seq.*: vol. viii. p. 395 *et seq.*

ness principle, is in the allegation, that each man, in pursuing his own greatest happiness, will sacrifice that of others; and that to call upon a man to pursue his own greatest happiness in this world is simply inviting him to pillage his neighbours of their proper fund of felicity. The answer to this is the same plea on which the captain of a ship, which has run short of provisions, would recommend all the crew, both weak and strong, to submit to an arrangement for short allowance. To A and B alone it would be their greatest happiness, perhaps, to have the run of the ship's store, but there are C, and D, and E, and F, with the same inclinations counteracting them; and though A and B might resist all the calls of humanity and sympathy, and might be even able, at the moment, to carry their point of preference by force, they would run the risk of a final accounting with the law. All, therefore, see that it will be their greatest happiness to make an average division; and good ship-economy will show how this is to be accomplished on such a system as to make an equal distribution, keeping in view the number of the crew and the time they are likely to be at sea. Just so is it in the world at large. Each man feels that the best security for himself getting a share of happiness, is to give way to a certain extent to his neighbour. Such is the habit more or less in every portion of the globe; and it is in the countries where practice has settled the proportion of how much should be kept and how much given away, with the greatest accuracy, that the end of morality has been best accomplished. The strongest counter-illustration which an opponent could find, is, perhaps, that of a despotism; but even here the principle is followed, though, according to our Author's opinion, very barbarously and unsatisfactorily. If the despot presides over a docile people who will not rebel, it is a sign that they prefer the ease of submission to the exertion of independence, and they are following their happiness in their own way. Among such a people, the temptation to play the pranks to which despotism is liable, is greatest, and, to say the truth, does least harm. But if an autocrat were calculating what course would produce him, on the whole, the greatest happiness, it is believed that he would not find it to be in roasting his subjects before slow fires, or skinning them alive, or hunting them with blood-hounds; and that the despot who has taken the best estimate of a happy reign, is he who has resolved to make his sway wise and beneficent; to do justice and to love mercy. But it is seldom that the embers of the spirit of resistance have been so completely extinguished that no gust will waken them into a blaze; and more or less, the fear of resistance holds the despot in awe, providing in his person an illustration, though certainly but a rudely developed one, of the counteraction which is supplied by the universality of the pursuit of self-enjoyment.

There can be no better illustration of the wide-embracing influence of what has been denounced as "the selfish system," than its extension not only to all classes of mankind, of whatever colour or persuasion, but to every living thing to which the Deity has given, along with animal life, the capacity of physical pain and pleasure. Bentham was a strenuous supporter of the legislative protection of the brute creation from cruelty,* on principles which will be found more fully explained in Section Sixth

* See the Works, vol. i. pp. 142-143, 562; vol. x. p. 549-550.

SECTION II.

PRINCIPLES OF MORALS AND LEGISLATION.

Bentham made a rigid analysis of the various forms in which the fear of consequences check a man in the pursuit of what may be his own individual pleasure; and having ranged and grouped them, he divided them into four classes and called them Sanctions—the chains, as it were, which bind a man from following his own wild will. These are, 1st, The Physical Sanction, viz., the bodily phenomena, which, in the course of human conduct, arise from certain classes of acts, and punish the individual by the painful sensation created, or reward him by the pleasurable. Disease produced by dissipation—health nourished by temperance and exercise, are the most common and the broadest developments of this sanction. 2d, The Political Sanction, which is in other words the law of the land, created for the punishment of offenders and the protection of the virtuous. 3d, The Moral Sanction, which is the operation of the moral habits of the state of society he is in, so far as it affects the individual—the difference between this and the legal sanction will be afterwards particularly explained, because the two together occupy the greater part of Bentham's labours. The fourth is the Religious Sanction, acting through the Anticipative operation of future rewards and punishments.* The proper direction of these sanctions constitutes the field of labour of a man who would do good to his species. The medical man—not he who merely cures diseases individually as they are presented to him—but he who investigates them in the direction of cause and effect, and gives the world the benefit of his discoveries, is a labourer in the cause of the proper end of the Physical Sanction. He discovers the sources of disease, leaving probably to others the task of observing how much happiness a man sacrifices by encountering it, and how much unhappiness he will escape by avoiding it. The moral philosopher is the man who deals with the moral sanction. As to the Legal Sanction, there are few men, from the emperor down to the non-elector wearing a party badge, who has not some influence in its operation; and a right influence is developed in the making of good laws, a wrong in the making of bad. The influence of the religious sanction is also, more or less, in all men's hands, but chiefly in that of the clergy. It is, under some circumstances, the most potent either for good or evil. Of its operation in the former shape, no illustration will be needed in a Christian land. For the latter, we can look at all the crimes which have been produced by religious influences,—the great tragedy from which Christianity dates, the Massacre of St Bartholomew, the Inquisition, the murder of Archbishop Sharp, the persecution of the Irish Catholics.†

There are two main objects in view, in those of Bentham's works,

* For an Exposition of the operations of the Sanctions, see above, p. 16 *et seq.*; see also Works, vol. i. p. 14 *et seq.*; iii. 290; vi. 13 *et seq.*, 260 *et seq.*

† "Fanaticism never sleeps: it is never glutted. It is never stopped by philanthropy, for it makes a merit of trampling on philanthropy. It is never stopped by conscience, for it has pressed conscience into its service. Avarice, lust, and vengeance, have piety, benevolence, honour—fanaticism has nothing to oppose it."—*Works*, vol. i. p. 75, note.

which are intended to influence human action—the direction of the Moral, and the direction of the Legal Sanction. The one is to instruct the individual as to what he ought to do—the other is to instruct the legislator what he ought to enforce and restrict. Where the former has been the end in view, the science has been denominated Morals or Ethics—by Bentham it was called Deontology, from the Greek τὸ Δέον, That which should be, or which is right. Where the other end is held in view, the science is called Politics or Political Philosophy, and embraces within it the art and science of Legislation. To this department of his general system for the regulation of human actions, by far the greater part of Bentham's works have been devoted. Although the Greatest-happiness principle be the end in view of all his writings, whether they instruct men how to direct their own individual actions, or teach them how to make rules for the action of others, yet there is a broad demarcation between these two subjects, beginning at the very root of both of them. That which it may be each man's duty to do, it may not be right for each legislator to enforce upon his subjects; because the very act of enforcement may have in it elements of mischief to the community, preponderant over the good accomplished by the enforcement. In other words, it may tend to the greatest happiness of society, that a man should voluntarily follow a certain rule of action; but it may be injurious to the happiness of the community in general, to compel him to follow such a rule if his inclination be against it. For instance, in the Defence of Usury, the lending and borrowing of money at high interest, for the purpose of improvidently ministering to extravagance, is condemned; but, on the other hand, it is found that the laws for suppressing usurious transactions are so mischievous in their effect, that they too are condemned for precisely the same reason—their malign influence on human happiness. Thus it is, that the rule of action for the individual, and that for the legislator, are kept distinct from each other; and it is shown by Bentham, that much of the mischievous legislation which he attacks has its origin in this distinction being overlooked. Legislators forget that they have to strike two balances, and not one only, before they act. The first arises out of the question, whether a given course of action is beneficial to the human race? and when this is answered in the affirmative, there comes the second, and frequently overlooked question, whether the enforcement of it, by any laws within the power of the governing authority to put in practice, will likewise show a balance of benefit? Moreover, as legislators often forget to strike the second balance, they also often come to a general conclusion without taking the two seriatim, and either omit altogether, or fail in taking a due estimate of the first. But it is clear that the law which is made without the first balance being struck, as well as the second, must be unapt. Unless it be first settled that the thing proposed to be done would be good if done voluntarily, there is no room for propounding the question, whether it can be advantageously enforced. It thus occurs, that the field of Deontology embraces within it the field of legislation, and that the two are not coextensive, the latter being smaller than the former. From this want of coextensiveness there arise mistakes in arguing from the latter to the former. The Law is a choice of evils, because coercion is itself an evil. This element of evil is not inherent in a man's voluntary acts, and, therefore, in them, no allowance can be made for it. If, therefore, a man square

his voluntary morals by the law, he may act on a totally erroneous estimate of what they should be. This he is liable to do, even in the case of the law being deduced from a moral system abstractly accurate ; and the circumstance, that legislators are liable to make mistakes and erroneous deductions, increases the chances against his being right.

In pointing legislation towards the distribution of the greatest possible amount of happiness among mankind, the chief difficulty was found to consist in the adjustment of the proper proportions in which certain objects of the law, to some extent conflicting, should be respectively aimed at. These objects Bentham classified as,

Security,	Abundance,
Subsistence,	Equality.

These have all to make, to a certain extent, sacrifices to each other, and the source of difficulty is in the adjustment of these sacrifices. There can be little happiness in a state where there is no security for property ; but, on the other hand, if the right of property were so absolute, that one portion of the population should be permitted to starve to death ere the property of those who happen to be richer can be touched, it is clear that there will be much misery in such a country, and that a feeling of unhappiness, most vividly experienced by those who are subjected to actual want, will spread upwards, in the form of apprehension, among those who have more or less chance of being involved by the revolutions of the wheel of fortune in such a calamity. Hence comes the necessity for a provision for the poor, that the unfortunate may be preserved from death by starvation. But the principle of security to property and industry, on the other hand, demands that this provision be so regulated, that it shall never become an inducement to able-bodied men to live upon the property of others instead of resorting to honest industry. As the Author happily says, "The treasure of the comparatively rich is an insurance office to the comparatively indigent ;" but care must be taken that the insurer be not bound to pay till the calamity he insures against has occurred. The law supplies this insurance office to the public by favouring abundance—allowing means for the accumulation of capital, and protecting it when it is accumulated. The various advantages accruing from the existence of capital are for consideration under the head of Political Economy, (see p. 399.)

The principle of equality has a rivalship, to a certain extent, with that of abundance. The more extensively property is distributed, the more happiness does it produce ; for the amount of felicity which each person enjoys is not increased with the relative proportion of his riches. A may have nine times the riches of B without having twice as many sources of enjoyment. It would thus conduce to general happiness if there were many small fortunes and few large ; but here security and abundance come in for their claims. Unless men be assured in the enjoyment of their wealth, they will not exert themselves to increase it ; and that abundance, so beneficial to the community, will fail to be created. But, on the other hand, the law produces distinct mischief by favouring or compelling the accumulation of property in the person of individuals. The former it does in the hereditary system—the latter in the law of Entail. The law, besides its direct effect, has its bearing on the habits and opinions of society, and the malign influence of the hereditary prin-

ciple has spread itself beyond the sphere of its mere legal enforcement. Legislation, instead of favouring the accumulation of a family property in favour of one member, should have directed an equal distributio within certain bounds ; and thus, both in law and in national habits, equality would have been the rule, and the hereditary principle the exception.*

The application of the Greatest-happiness principle to Legislation may perhaps receive elucidation from some account of the most important of the subsidiary principles which its Author deduced from it,—viz., The Non-disappointment or Disappointment-preventing principle, developed in measures tending to obviate disappointment, and the pain with which it is always accompanied.

Among the cases in which he found that legislation, in its hasty and empirical course, had neglected to strike the balance between good and evil with sufficient minuteness, was that in which small clusters of individuals came to be affected by general legislative measures. He kept in view, that individual interests are the units by the aggregation of which the collective term, "the public interest," is created ; and that there is no living being whose certain or probable welfare, in relation to any proposed measure, should not be thrown into the scale when its disadvantages are weighed against its advantages.† The principle, that private interests should yield to the public good, he thus so far modified, that from the amount of any public good done, he deducted whatever private interest might be injured. In estimating the evils done to individuals, he examined minutely the pain caused by disappointment, and found it to be, on arithmetical principles, greater in the average case than the pleasure of acquisition, and than the pain (if it can be so called) of non-acquisition. The income of A is taken from him and given to B—A loses his all, but B gets merely an addition to what he had before. The whole pleasure in the possession of a source of livelihood is removed from the one ; the other only receives the secondary pleasure of an increase. Let A's income be dispersed among the public—he loses all, and is eminently unhappy ; while that which constituted the source of his former content is distributed in portions so minute, that the amount of happiness produced by it may be scarcely perceptible. On the other hand, so long as A is left in the enjoyment of his income, according to the prospects held out to himself and to society at large, from the first,—as no man expected to obtain any of it, no one is disappointed by its not being distributed, and he himself is content. The non-disappointment principle is the great foundation of the sacredness of property. More injury than good is done, by allowing either individuals, or the public at large, to interfere with that which a man has, under the sanction of the laws, been allowed to call his own. The pain of disappointment to the proprietor is the primary evil of attacks on property. The secondary evil is the alarm to society at large,—the dread which each individual has, that he too may be the victim of spoliation.

Like the other great principles expounded by our Author, the non-disappointment principle pervades society in all its acts ; but it was his task, by a minute analysis of its principle and operation, to discover

* See Works, vol. i. p. 301 *et seq.*; ix. 11 *et seq.*
† Ibid. vol. ii. p. 252.

cases in which its application had been neglected and misunderstood. He applied it to the principle of compensation for offices abolished, or for any other injury caused to individuals by the march of improvement. He was in favour of allowances to those whose official emoluments were affected by law reforms,* and to the owners of slaves on emancipation;† and he even hints at such a concession to the owners of proprietary seats in parliament, in the case of their disfranchisement by parliamentary reform.‡ In the estimate of the incidence of good and evil on society at large, he saw that there was a clear gain in a government following out the principle, that when a man steadily and honestly follows his calling, and makes his livelihood by it, he should feel the assurance, that no act of the government of his country shall remove it from him. But he found a secondary advantage in the principle of compensation: it has a tendency to remove the opposition perpetually operating against improvement, in the sinister interests of those who benefit by abuses. Pay off the incumbents, is thus a liberal policy, by which those who are most conversant with the operation of any institution, are relieved of a temptation to overlook or defend its defects.§ The system is capable of abuse. Offices might be created for the compensation which will accrue on their speedy abolition. But this is an evil as much to be guarded against on true utilitarian principles, as the other; and it has to be remembered, that a people who take upon themselves the burden of compensation, are the more likely to criticise the propriety of the institution created. The countries most liable to government abuses of every description—despotic and disorganized states—are, at the same time, those where the interest of individuals is most ruthlessly overwhelmed in national changes.

He extended this principle to Finance, holding that, apart from other elements of good or evil, it made indirect preferable to direct taxation. It is better that a deduction should accrue to a sum of money before it reaches the possession of him for whom it is destined, than that, after being in his hands, a portion of it should be withdrawn. The operation of the principle in this department he found to be limited. There were but few cases, such as that of the legacy duties, in which the deduction could be truly said to be practicable before the money was in possession —in the case of an annual salary, the mere knowledge of the amount is nearly equivalent to possession, and a deduction before payment differs little from a charge after payment. A tax on consumption is another method in which the principle may be brought to bear. The tax is paid, in the first place, by the dealer, to whom it is, in reality, not a tax, but a portion of capital expended in the form of duty, which otherwise he would have to expend on commodities. The purchaser pays dearer for the commodity; but it is maintained that, in doing so, he does not experience the same feeling of hardship which would arise if the sum charged as duty were separately taken from him after his purchase has been made. In the general case, a direct tax is a thing obligatory; a tax on consumption, unless it be on the absolute necessaries of life, calculates on its voluntary adoption by the purchaser.‖ This species of

* See Works, vol. iii. p. 325; v. 505.
† Ibid. vol. i. p. 346.
‡ Ibid. vol. iii. p. 533.
§ Ibid. vol. v. p. 277.
‖ Ibid. vol. ii. pp. 573, 580.

tax has, it is true, its defects, in as far as it may impede or disturb commerce and manufactures; but these are objections belonging to the department of Political Economy.

A plan was proposed by Bentham for raising a revenue by the application of this principle to the law of succession; and in arranging his plan he inquired into the principles of succession, and the extent to which the existing systems in Britain are founded on reason. Whatever theorists may promulgate on the anomaly of a man dictating for his property after death, or on the principle that when the man is done with the use of his goods they should go to the state, the practice of mankind in all places and times has supported a law of succession; and an examination, on the principles of the utilitarian philosophy, vindicates the practice as a right one. He who has brought children into the world is the person against whom there is the strongest claim to support them; and the law justifies this claim by giving them his property on his death. If children have been brought up in the gratification of certain tastes and luxuries; in short, in a particular rank of life and with a certain expenditure—it is better, so long as no one is injured by it, that they should continue in the same course. The most simple and the least injurious method of giving them the means of doing so, is by continuing in their possession the wealth by which the luxury and rank are purchased, on the death of its previous holder.* Let the daughter of a labourer be left without any pecuniary provision—it is nothing but what she expected, she suffers no hardship or disappointment, and goes forth to her labour with a glad heart. Let the daughter of a wealthy land-owner or merchant be left in the same position—a fearful calamity has fallen upon her—a calamity undeserved, and heavier than the punishment of many a formidable crime. So much for the case of individuals; but the benefit of succession operates also on the public at large. The providing for a family, or, even if a man have no family, the faculty of destining his money to what purposes he pleases, is one of the greatest inducements which he can have to make and to save property—the one an increase of the general capital of the community, the other a preservation of the increased capital from dispersal. Were it not for the wives and children they may leave behind them, there are many men taxing their heads and hands to great efforts who would be idle and worthless; there are many founders of great manufacturing and commercial projects who, but for such a motive, would never have thus distributed the means of industrial wealth around them.

But it comes to be a question whether the law has not carried the operation of succession beyond the bounds within which it is useful. Between the children who have shared in their parents' fortune, and the distant relation who never heard of the wealth thrown at his feet, till some scrutinising lawyer made the discovery of his relationship, there is the greatest possible difference: there are strong reasons for the law of succession operating in the one case—none for it in the other. On this principle Bentham founded his plan that succession should open only to near relations, and not to distant. If the law were once so established and known, there could be no disappointment among distant relations, (excepting those to whom the law was *ex post facto*;) but even indepen-

* See Works, vol. ix. pp. 16, 17.

dently of a knowledge of the law, there are multitudes of cases where the distance of the relationship precludes expectation. It is true that a man may adopt a distant relation—the same who, in the present course of succession, would be his heir—as a member of his family, partaking in his luxuries, and acquiring habits, a sudden check on which would be a hardship. This is true; but in the same manner may a man adopt a stranger; and in either case there is proposed to be open to him the right of bequest. The line which Bentham proposed to draw, is that of the forbidden degrees. He suggested that, where the nearest relation to the deceased is beyond those degrees, there should be no succession, except through bequest. He found in this plan two secondary advantages; it would cut off a great source of expensive litigation, (of which the country, in providing judicial establishments, bears part of the expense,) in the enforcement of distant claims to relationship through obscure and conflicting evidence; and it would afford an inducement to men having property to leave behind them, to marry. The plan is developed in the tract called Escheat *vice* Taxation.*

SECTION III.

THE PURSUIT OF TRUTH.—FALLACIES.—PRINCIPLES OF EVIDENCE.

Believing that falsehood was one of the main instruments of evil to mankind—that a regard for perfect truth was one of the greatest safeguards against the various means by which sinister interest could operate to the evil of society, Bentham made war against mendacity in every form in which it could raise its head. He found that the ingenuity of sinister interest had here covered society with a net-work of evil, through the meshes of which it required the most vigorous efforts of the understanding to clear a way. He found a popular notion, that it was in certain words used, and not in the act of deceiving, that the offence of falsehood consisted. The shepherd in the fable, who promised to the stag not to give information of his hiding-place, did not tell the hunters where it was, but pointed with his finger to the spot. It was the interest of persons who had done such deeds to remove the odium from the act of betrayal to that employment of false words called a lie; but in Bentham's view, men might stumble among the ingenious intricacies of words, and he found no criterion of criminality but in the thing done through their means. Words, the simple purport of which would convey a falsehood, may be uttered in a manner and with a purpose to put the party right, and keep him from deception. On the other hand, words signifying the truth are often made a mere effectual cover to the falsehood they are intended to convey. A newspaper, the other day, wishing to show that certain operations abroad had been carried on in consequence of instructions from home, stated that such instructions had been sent out, but did not state that they had not arrived. Almost every

* Works, vol. ii. p. 585.

species of commercial deception is carried on in words that are in themselves true. When emigrants are enticed to embark with their little property for a colony where they are ruined, the inducement is, in general, some perfectly correct description of luxuriant vegetation and salubrious climate, which is all deceptious, because it is not stated that there is no means of making the natural profusion available—that there is no commerce with the place—no system of inland conveyance, and no harbour. An auctioneer lately advertised an estate for sale in Canada, "containing a quantity of fine old timber," in the hope that some one who did not know that timber in Canada is worth less than nothing, might act on the advertisement. All these acts have in them whatever there is of evil in a lie. It has become the practice to refer to them as the "speaking the truth, but not the whole truth," an unsatisfactory expression, which seems to intimate that they have in them at least a portion of the virtue of truth. Let them be looked at simply in the result intended to be accomplished, and so judged, and then they will be seen clearly to be in every respect equivalent to lies.

As the effects of falsehood are of the most varied character, ranging from the highest crimes to the most paltry and unpunishable social frauds, there cannot be any measure of punishment for it, (of punishment whether as administered by the Law, or by the opinion of society,) but in taking the measure of the offence which it is made the instrument of perpetrating.* A lie producing death is the offence of murder; a lie giving an undeserved character of excellence to an article of commerce for the purpose of making it saleable, is but a petty fraud. Can it be said that these offences are equal in magnitude? Yet if the offence be in the lie, and not in the effect produced by it, the criminality of the two cases is precisely coextensive; for the verbal falsehood is as distinct in the one as it is in the other. On this point Bentham found the laws for the punishment of judicial perjury defective. The criminality was thrown on the ceremony, with which the falsehood is decked, and not on the effect produced by it. To tell a falsehood in a court of justice cannot be, under any circumstances, other than a crime of high magnitude: but between the case of a man swearing away the life of another, and that of a man swearing five pounds away from its right owner, there is surely a greater difference than between the saying the lie with, and saying it without certain formalities. Bentham made an accurate analysis of judicial falsehoods, for the purpose of measuring the extent of their criminality by that of their respective evil effects, and he introduced the new distinction between temerarious and mendacious falsehood. Among those who looked merely at the words spoken as the offence, when it turned out that the speaker did not anticipate the meaning that would be attached to them, or would not have uttered them if he had known them to be false, he was considered innocent. But Bentham, on the principles on which he who fires a pistol into a church, or drives furiously through a crowded street, is held responsible for the mischief he may occasion, did not see any reason why the individual who maims or slaughters the person or reputation of another by rash words, should not be equally responsible.†

* See "Swear not at all," in Works, vol. v. p. 187 *et seq.*; vol. vi. p. 297.
† See Works, vol. vi. pp. 280, 292 *et seq.*

On an examination of the various processes through which the truth, in regard to the merits of human actions, is obscured, the common practice of giving a good or bad character to motives, according to the feelings of the person who is speaking of them, presented itself as one of the most common devices of falsehood. Results are open and susceptible of examination—motives are hidden in the bosom of the actor; hence those who love darkness rather than light will more readily exercise their ingenuity in giving a character where its truth or falsehood cannot be detected, than in examining that which is spread before the world. But for an elucidation of this subject, reference may be made to the passage on the "Elements of Human Dispositions," quoted above, (p. 7-16.)

The petty insincerities evolved in the course of casual disputes, for the purpose generally of obtaining a temporary intellectual victory, were occasionally the subject of Bentham's reprehension. He did not consider that this habit could be compared in point of evil with many of the other sources of untruth to be found in the practice of society: but it had its sphere of mischief, and was, consequently, worthy of exposure.*

In many established institutions Bentham found principles tending to the commission of falsehood, and to the designed obliteration of the distinction between the truth and a lie. Of these the most prominent are Oaths, in their two classes, Promissory and Assertory. A promissory oath, such as an oath of allegiance, is an obligation taken not to know the truth; or, if it should be known, not to act upon it. It is generally imposed under the influence of bribery and intimidation—at the time when a man has the inducement of some benefit, such as the appointment to office—to harden his conscience against the iniquity. It binds the individual down to a certain line of conduct, however clearly his conscience, aided by experience and reflection, should afterwards be opened to the evil of the course. To some it is a drag, preventing them from doing what is right; for they feel that they have already registered a vow in heaven to do what is wrong. To others it is a ready excuse for the wrong they are inclined to: they have sworn to do it, and it is useless to tell them it is not right. For farther illustration of this subject, as well as of the effects of judicial oaths, reference may be made to several passages in the foregoing selection.†

Since the earlier works of Bentham against oaths were published, Legislation has made rapid strides in the abolition both of the promissory and assertory class.‡

Bentham considered the support and perpetuation of Foundations, or Institutions for the inculcation of particular doctrines, to be most dangerous to the cause of truth;§ and he likened them to funds for paying judges to decide, not according to justice, but in favour of a specified

* See above, p. 255.

† See p. 256 *et seq.*

‡ See Editor's note to Works, vol. v. p. 183.

§ Establishments for the support and influence of a dominant sect in a civilized country, are not to be confounded with funds for appointing propagandist missions to barbarous countries, or to the destitute or uncivilized portion of a community. The former have a tendency to stop inquiry, and keep back the community in the pursuit of truth; the latter have for their object the raising less intelligent classes to the standard which has been already reached by the more civilized. Apart from questions as to the superiority of one sect of Christians over another, the religious opinions of civilized Europe cannot well be

class of clients. So long as the system shall continue, of keeping foundations "sacred," as it is called, from the interference of the legislature acting upon them for the common good, they become so many centres of absolutism in the midst of free institutions—of absolutism, where there is not even that chance of improvement which may be afforded in the probability of occasional good men appearing in a succession of despots; for the despots who have thus transmitted their will to future ages, are gone; and neither hope nor fear—neither reason, nor the treasures of experience, can operate upon them to make them revoke their laws. Thus, every man who is possessed of wealth, by judiciously founding with it some institution properly calculated to the end in view, may place a perpetual barrier in the way of free inquiry, and tie down a portion of posterity to the amount of knowledge and the class of opinions possessed by the men of his own generation.* In public national matters, legislation in some measure adapts the increased facilities to the enlarged wants of the age; systems of management make some approach to the improved habits of the time; official salaries are brought to something like a proportion, according to the state of the labour-market, with the work performed for them. But centuries pass, with their train of changes and improvements, and leave the "foundation" unaltered and unalterable. The legislature dare not pry into its operations, or ask what its officials are paid, or what they do; while the daily routine of the establishment, and the very costume of its inmates, proclaim it at war with improvement —a cluster of human beings, at whose gate the march of civilisation and enlightenment is arrested. The whole principle of the sacredness of foundations proceeds on a false analogy with the stability of property. Because it is good for all members of society, that a man should keep, and use for all lawful purposes while he lives, and should give to whom he pleases at his death, that which he has made, or which he is otherwise allowed to call his own,—it does not follow that it is good for the community that he should be allowed to employ it in building a barrier to stop the stream of civilisation and improvement, and to keep a certain class of his fellow-men just as enlightened on a certain set of doctrines as he is himself, and no more so. The sinister interests which support the permanence and inviolability of such institutions, are founded in the wealth they give to individuals and the power of domination they confer on classes of thinkers. When they are overwhelmed by any great revolution of opinion—such as the Reformation—those portions of them which escape individual rapacity are seized upon by the strongest sect, appropriated by them to the promulgation of doctrines the reverse of those for which the property was originally destined, and are then surrounded by the same impregnable walls of sacredness and immutability, as if they were still held in terms of the original founder's destination, and had never been wrenched from the hands of those for whom he intended them.

propagated in barbarous Africa, without conveying some portions of whatever, in the character of the people of Europe, is superior to that of the people of Africa. But it by no means follows, that, in the same civilized society, good will be done by giving one sect power and money to bear down another. The subject of Christian missions was not investigated in any of Bentham's published works.

* See Works, vol. ix. pp. 35, 303.

The "Fictions of Law," of which the English practice is so full, were repeatedly and earnestly attacked by Bentham, both collectively and in detail. The example shown to the world, of falsehoods deliberately, and on a fixed system, told in the very workshops of justice, and by those who are employed to support truth and honesty, he looked upon as holding out a pernicious example to the public. It is true that new fictions are not now invented—at least on any considerable scale; and that those formerly created have become a fixed part of the law, and are uniform in their operation. It is still the case, however, that from the nominal repetition of the fraud under which they were originally perpetrated, they are a cumbrous and costly method of transacting judicial business. But they have a much worse influence than this. By the obscurity and complexity with which they surround operations which might be simple and open, they afford concealment to fraud and professional chicanery; they exclude the unprofessional man from the means of knowing what the lawyer is doing among the windings of the professional labyrinth, and they show him that the law countenances palpable falsehoods.*

A class of chronic falsehoods had found their way into the minds of political thinkers, which Bentham, in imitation of the logicians, termed Fallacies. Of these he undertook a laborious and minute investigation and exposure; and there were none of his extensive labours to which he looked with more satisfaction than this rooting out, from the field of political thought, of the tares which the enemies of truth had sown in it. He found that they consisted, to a great extent, in an ingenious perversion of the language of praise or blame, to make it comprehend that which did not properly come within the quality expressed: and the permanent evil to truth he found to consist in the circumstance, that by habitual use and reiteration, men came to associate the good or bad quality with the thing so spoken of, without examining it. Of his exposures of fallacies, an opportunity has been taken of giving several specimens in the foregoing collection, (see p. 199 *et seq.*)

The Book of Fallacies is chiefly directed against the devices made use of on the side of corruption or arbitrary power. In a separate tract, called Anarchical Fallacies,† there is an exposition of the false logic with which demagogues, and other enemies of well-ordered society, vindicate their misdeeds. His Text-Book, on this occasion, was "the Declaration of the rights of man and the citizen, decreed by the Constituent Assembly in France;" and it was while the philosopher, in his retirement, was expounding the sanguinary and anti-social reasoning of this production, that the wildest flames of the Revolution burst forth, and confirmed his prophecies ere the ink had dried on the page. In the storm of that eventful period, the small still voice of one weighing the meanings of words used, and drawing the practical inference of vague generalities, was not heeded. It is true that this was but a criticism on the meaning of words; and the time was not one for theorising but for acting. Words, however, are the expression of opinions, and opinions are the source of acts. The same opinions may again gain ground more or less, and be expressed in like words, and amenable to the same criticism; and if to the mere lover of narrative, or the partisan politician raking out from

* See for animadversions on Fictions, *supra*, p. 119 *et seq.*

† Works, vol. ii. p. 489 *et seq.*

the embers of the Revolution materials for modern controversy, the philosopher's logical comment will have little interest, it will weigh much with those who have the peace and wellbeing of society really at heart. A large extract from the Anarchical Fallacies will be found above, (p. 60-83.)

Bentham considered that the Legislature, in dealing with the subject of Evidence, had in its power the means of creating and applying to practical use a store of facts, covering the whole field of human action, and forming an experimental foundation, on which every description of operation, from the proceedings of the Legislature and the judicial tribunals, to the acts of the private citizen, might be beneficially regulated. As the great means of separating what is true from what is false, he thought the code of judicial evidence should proceed on the most searching examination of principles, and should be most cautiously and scientifically organized. To an examination of the principles on which that code should be based, and of the aberrations of the existing law, he devoted two of the volumes now before the public;* and there is, perhaps, scarcely any other of his expositions which has been so generally adopted by all who have examined it, or which the Legislature has so decidedly (though certainly very cautiously) shown itself disposed to admit into the law of the land. The subject is divided into two great heads. The first is that which is ordinarily called Evidence—the succession of facts, from the consideration of which a belief is come to on one side or other of a statement; as in the case of a civil or criminal trial, when, from the testimony of witnesses, the conduct of persons, or the position of things, a decision is come to by those who are appointed to judge. This is called Unpreappointed evidence, because the dispute arises out of the very fact that arrangements have not been, or could not have been, made sufficient to obviate it; and the circumstances out of which the truth is finally reached were not prearranged for the purpose of exhibiting it. The other species of Evidence is called Preappointed, and consists, in general, of what are commonly called Records: authenticated statements of facts, such as are conveyed in recorded contracts, registers of births, marriages, and deaths, &c., reduced into a state of evidence to be applied to subsequent use, whether at the instance of the legal tribunals, or of the legislators or others, who may wish to make the facts so proved the foundation of their public or private acts.

Bringing his ruling principle to bear on the first of these great classes, he found that no species of evidence should be hidden from those who had to judge in a disputed question, unless it could be made to appear that more mischief would be done by the admission than by the exclusion. The law, instead of weighing the matter by this simple rule, has given effect to barbarous usages and prejudices, and to feelings of antipathy and vengeance. Of the manner in which these exclusions operate, through the ceremony of an oath, and the rejection of witnesses on account of their position, their opinions, or their character, many illustrations will be found above, (see p. 283 *et seq.*)

The most mischievous of all these exclusions, he found to be that by which a man is privileged to decline giving testimony which may injure him. (See above, p. 280.) It would seem, to those unaccustomed to its

* Works, vols. vi. and vii.

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operation, to be an absurdity too perverse to have entered into the brain of man, to award a punishment for an offence, and then, on the plea of humanity, to take measures to prevent the criminal from betraying his guilt. It is quite true that there may be means of coming at the truth which ought to be avoided from their mischievous effects on society; but these mischievous effects can only occur in the unjust punishment of the innocent,—the just punishment of the guilty cannot be an evil. Torture is a means of coming at the truth; but the objection to it is, that the innocent as well as the guilty may suffer from the operation of the test. In the case of a man criminating himself, it is the guilty, and none other, that can be affected; and society at large gains an undoubted advantage by the proof of a crime and the consequent punishment of the delinquent. The leading principle laid down by Bentham regarding the investigation of crimes is of the clearest and most effective character; it is simply this: adopt every measure for the exposure of the guilty, which will not involve the innocent. This principle does not admit of confidential communications by criminals to their law advisers being kept inviolate, any more than their revelations to their accomplices. Confidential communications, the object of which is to defeat the law, have no better claim to secrecy than those which have in view the commission of a crime. A change of system in this respect would probably make criminals less confidential with their agents; but it is difficult to see what harm society could suffer by an alteration which would only compromise the safety of the guilty.

SECTION IV.

SYSTEM OF GOVERNMENT.

To find out the best means by which mankind could be governed, was the chief object of all Bentham's exertions; and there is scarcely a work which he has written in which he has not some allusion to this subject. His expositions in reference to politics are divided into two distinct classes. In the one he lays down those principles and rules of action which ought to guide a people, supposed to have thrown off all trammels of prejudice and established custom, and to be in search of the very best form of government which a practical philosopher would dictate to persons ready implicitly to adopt his arrangements. In the other class of cases, in which he had immediate practical ends in view, his endeavour was to mould the existing machinery of established institutions and opinions to the production of the best practical results. The reader, therefore, must not take it for granted that the principles and institutions which are developed in the former class of works, are such as their Author would recommend a practical statesman, connected with an established government, to put into immediate operation, however much he might wish to establish in the statesman's mind a leaning to such opinions as an ultimate end of gradual change. There are projects of practical reform in the minor works of Bentham, adapted to all grades

of government, from democratic republicanism in the United States,* to Mahomedan despotism in Tripoli.† It will not be expected that any development should be here attempted of the different projects of reform which he thus applied to such distinct circumstances; but some explanation of the more conspicuous features of his opinions on government will be attempted.

He held that the ruling power should be in the hands of the people, because the happiness of the people being the object of government, the means of obtaining that object would thus be in the power of those who have the chief interest in realizing it. The happiness of every individual in the community would be best secured by giving every individual the species of government he would like best. But as confliction of interests renders this impossible, the nearest approach to such universal freedom of choice is, to put the power into the hands of the majority, whose use of it will not only be that which is most conducive to their own liking, but will likewise be such as cannot be very detrimental to a minority, which, in the case of such perfect freedom, must have too many interests in common with the majority to be in any case much injured by those proceedings which may appear to the latter the most fitting. But all the people of a state large enough to enjoy a separate government profitably, cannot collectively transact the business of government; and therefore it is necessary that some artificial arrangement should be adopted, by which the closest practicable approach may be made towards acting in accordance with their opinions: hence comes the Representative system.

Bentham was of opinion that no male adult should be excluded from voting for a representative, except those who are unable to read. His criterion of a right to the franchise was therefore equivalent to that which Mr Adam has aptly called The Knowledge qualification. Bentham termed it "virtually universal suffrage," because it excluded no one who chose to take the trouble of learning to read; and it might fairly be estimated that those who refused to make this exertion were as unfit to exercise the right to advantage, as they were careless of its possession.‡ There were other persons besides "non-readers" who might be excluded, were it not for the complexity that would be so created—*e. g.* people of unsound intellect, and criminals. Their influence, however, would be almost imperceptible—they would not exist in any one place in sufficient numbers to be made serviceable tools of; and their votes, presuming them to be given without thought, or with a bad intention, would be likely to tell on either side of a contest with tolerably equal effect. Arrangements for excluding them would be complex and uncertain; whereas the criterion of ability to read is easily adjusted on a simple practicable arrangement, which is described in the Draft of a Reform Bill.§ He was of opinion that the questions whether females should be admitted to the franchise, and how the political privileges they ought to hold should be bounded, could not be satisfactorily discussed while prejudices on the subject are so strong as they were when he wrote.‖

* See Works, vol. iv. p. 451 *et seq.* † Ibid. vol. viii. p. 555 *et seq.*
‡ See Works, vol. iii. pp. 464, 470, 560, 565.
§ Works, vol. iii. p. 565.
‖ See Works, vol. ix. pp. 3, 108. Perhaps the following would be the just

Another of the essentials of representative government, is Secrecy in Suffrage—the system of the Ballot. The reasons will be briefly explained further on in connexion with the principle of responsibility. In the Draft of a Reform Bill, arrangements are made for conducting an election on the Ballot system, well worthy of the attention of practical reformers. The operation is to proceed on a raised platform in presence of the public and of certain officials, who all see that the elector votes for some one, without knowing for whom. In a glass-covered counter, cards are deposited bearing each the name of a candidate, a separate compartment being provided for the cards of each candidate. These cards have each a joint or hinge in the middle, admitting of their being folded double, with the name inside. At the moment of voting no one sees these cards but the voter, who takes one of them up folded, and holding it between his finger and thumb in the presence of the public, hands it to an official, who, without seeing the name within, files it in the presence of the public.* It is a necessary preliminary of such a system, that all questions as to the right of voting are prejudged, and that no scrutiny can supervene.

Annual Parliaments, and equality of Election Districts, are farther arrangements of the representative system, the reasons for which are also noticed in connexion with responsibility. To obviate the inconvenience apt to be created by the annual separation of the legislature, a plan is devised for the appointment of a "Continuation committee," to keep on through a succeeding session the thread of the legislation commenced in a preceding;† an arrangement which, in conjunction with others for keeping projects of law once brought before the legislature from dropping out of notice, would prevent the public time from being unprofitably wasted, by being devoted, as that of the British Parliament frequently is, to the furtherance of measures which are afterwards lost sight of.

The arrangements for the strict attendance of the members of the legislature, and for economically adjusting the time at their disposal to their duties, form the subject of many stringent provisions in the Constitutional Code.‡ It is provided that the executive ministers of the state shall be present *ex officio*, in order that they may be questioned, may afford instruction and explanation, and may even originate measures and join in the debate—but they are not to have the privilege of voting.§ That the superior experience and knowledge which the judges must possess, of the state of the law, and of the amendments from time to time necessary to improve it, may be applied to practical use, an official communication with the legislature is kept constantly open to them; and to prevent their suggestions from being neglected, provision is made for these being incorporated in the body of the law, if the legislature, after the proper formal intimations, do not interpose a veto.‖

utilitarian method of treating this question. At the present moment there is, perhaps, not above one female in a hundred who wishes to possess the franchise. The extension of it to the sex would be a sacrifice of the peace and happiness of the ninety-nine to the ambition of the one, and even the agitation of the question would be a modified annoyance to the former. It will perhaps be time for seriously considering the question, when the majority of the sex show an inclination to have a voice in Parliamentary Politics.

* See Works, vol. iii. p. 571. † Works, vol. ix. p. 170.
‡ Works, vol. ix. p. 163-170. § Ibid. p. 316. ‖ Ibid. pp. 431, 504-508.

In the British Parliament much of the time that should be devoted to the general legislation of the country is wasted on local and private projects. Of these there are some that should be appropriated to the Courts of Law—others should be managed by Local Legislatures. The arrangements of such local legislatures, in subordination to the supreme body, are provided for in the Constitutional Code.*

A hereditary legislative body is an institution utterly at variance with the first principles of that republican system, which Bentham considered to be the best form of Government in the abstract—the best form that could be adopted, if circumstances should give an unlimited variety of choice. But he was decidedly of opinion, that any second chamber, whether elective or hereditary, can operate to no good. It occasions delay. It makes rivalry and conflicts between house and house, which tend to the public detriment. It prevents decisions from coming clearly out, as between majority and minority, very often making a small minority of the collective members of the Legislature triumphant over a majority. The practical result of such a system, in the end, generally is, that the one house becomes the originating and working, and truly legislating body, while the other, finding itself incapable for good, has nothing to boast of but its capacity for mischief; the extent of which is the more palpably shown the more useful are the measures it resists. The services presumed to be performed by a second legislative body, in the shape of inquiry, and the deliberate and accurate inspection of measures before they are sanctioned, are all capable of being adapted to the legislation of a single chamber, through the instrumentality of committees.†

In considering the proper arrangements for the conduct of business by a supreme legislature, it was found, that very little improvement could be made on the practice of parliament; which, in Bentham's opinion, made the nearest approach to abstract perfection, which has been exhibited by any human institution. To those who are accustomed to expect in his works nothing but censure of existing institutions, the chapter, "on the mode of proceeding in a Political Assembly in the formation of its decisions," in the Essay on Political Tactics, will be a remarkable exception. Some extracts from it will be found in the foregoing selection, (p. 104-109.)

This loose sketch of the leading principles of the system of government, developed by Bentham in his Constitutional Code and other works, would be incomplete without the statement, that, according to his plan, the head of the government is the Prime Minister, chosen by the Legislature.‡ Of the methods by which checks are kept upon the power of this official; of his relation to the heads of departments, and the machinery by which their duties and powers are limited and connected with each other, it would be impossible to give anything like a satisfactory view in this sketch; and reference must be made to the substance of the Code.

An important feature in all the political writings of Bentham, consists in

* Works, vol. ix. p. 640 *et seq.*

† See Letter to Fellow Citizens of France on Houses of Peers and Senates. Works, vol. iv. p. 419. See also, ii. 307 *et seq.;* ix. 114 *et seq.*

‡ Works, vol. ix. p. 208.

elucidations of the means by which men entrusted with power may be prevented from abusing it to the public prejudice. Considering all the transactions of the Political authorities, including the administration of the law, as subject to two checks—the direction of superordinate political authorities and the control of public opinion—he searched for the best means of enforcing these securities, and found it in the principle of individual responsibility. To this end, he desired that every judicial or administrative act should be so done, that it might be seen by whom it was done, and under what circumstances. With this view he preferred individual management to board management. Where there are several persons concerned in giving effect to an operation, responsibility rests with no individual, and cannot be accurately partitioned among all. The relief from responsibility releasing each individual from the anxiety to do right, renders the appropriate industry and skill unnecessary. If one head and one pair of hands can transact the business, it will not be better done if half-a-dozen heads and a dozen pair of hands of the same skill and ability join in it. If one person cannot do the whole, or if a man be found eminently skilful in respect to one part of the transaction, and unskiful as to others, let the operation be divided accordingly; keeping this in view, that whatever a man is expected to do, or does, it be known and seen whether he does it, and how. On the same principle, there are objections to the administration of justice by more than one judge at a time; and in this case there is the additional argument, that a difference of opinion known to exist among judges of equal rank, power, and means of information, unsettles the law, and encourages litigation.*

But the principle of individual action does not extend to the legislature. The object in this case is, not the transaction of the official business of the country, but the direction and the control of its transaction, (or more properly speaking, the framing of the rules according to which it is to be transacted,) for the benefit of the people by whom the legislature is constituted. It might be practicable to take the votes of the whole people for one ruler to be elected by the majority; but besides many other risks and inconveniences attending on it, such a system would leave totally unrepresented some class of political thinkers, which might be nearly as large as that by which the ruler was elected. The greater the number of representatives, the greater will be the number of persons represented, and the nearer will be the approach made to that point of abstract perfection, which would result in everybody being represented. At the amount, however, beyond which legislative business cannot be easily or advantageously transacted, the number of legislators must be limited; and thus the problem of representation cannot be worked out without a certain number remaining unrepresented. But though there is a necessitated community of action in a legislature, individual responsibility may be preserved—preserved in the proper quarter—between representatives and represented. It is held that the representative should, so long as he is in that position, be actually, so far as is practicable, the person which his designation announces him to be—the representative of the opinions of those who have chosen him. It is not possible that, on every question which may come before the legislature, his own opinion will be precisely that of the majority who voted for him. It is not, as a point of morality,

* See Works, vol. iii. p. 571 note; iv. 125; v. 17; vi. 557.

recommended to him to adopt measures which his conscience repels, because his constituents approve of them. But it is his duty, if such a difference of opinion arise between him and his constituents, that, had it been anticipated before the election, he would not have been elected by them, to resign his seat. On the prospect of the representative committing such an act of self-sacrifice, however, no dependence is placed ; and a system of arrangements is expounded in the Constitutional Code, and the Election Code or Reform Bill, calculated to have the effect of removing, with the least practicable inconvenience and delay, any representative whose opinion is at variance with that of the majority of his constituents. The most important and comprehensive of these arrangements is the annual election of representatives ; by which, not only is the period during which a representative can be acting at variance with his constituents reduced to a comparatively short one, but a periodical intercommunication has place between electors and elected, conducive to the interchange of information regarding each other's sentiments.*

The principle of personal responsibility, carried through all other departments of the state, ceases with the constitutive or the elective constituency—the source of all political power. The interest of the individuals constituting the greatest number of the people is, that the government should be conducted favourably to the interests of that greatest number. Thus the general interest is each man's personal interest. When any one is transacting that in which his personal interest alone is at stake, he need be responsible to no other person : and the interference of another will be more likely to lead him astray than to put him right. The elector, if uninfluenced, gaining nothing by his choice but his share in the results of good government to all, votes accordingly for the man who, as a legislator, will act to that end. But if his vote for a person who will *not* act, as a legislator, for the general good, be made more valuable to him than his chance of a share in the results of good government, he will, in the general case, vote in compliance with that stronger interest. Hence the operation of bribery and intimidation at elections. Secrecy of suffrage, or, as it is commonly termed, the ballot, is the remedy held out for this disease. As the candidate cannot know whether or not the service has been performed, it is held that he will not give the wages. It is held that, since there is no means of detecting the nonfulfilment of his bargain, the bribed elector is in the same position, as to interests, with the unbribed—*i. e.* his interest is identical with that of the public at large, and in favour of good government ; and that the candidate, knowing this to be the case, will not throw away his money.†

But it is essential to the efficacy of this arrangement, as well as to the securing the majority in the legislature to the actual majority of the voters, that the electoral districts should be equal. Where one voter, by reason of his being in a small constituency, has as great a voice in the choice of a representative as ten have in a large constituency, then there is the temptation to bring against each elector in that small body ten times the amount of corruptive influence that will be brought against each constituent in the larger, or to single the former out for a concentrated attack. Thus, even were secrecy of suffrage conceded, without

* See Works, vol. iii. pp. 512 *et seq.*, 588, 600 ; ix. 191.
† See Works, vol. ii. p. 368 ; iii. 487 *et seq.*, 547.

equalization of election districts, so great might be the corruptive power brought to bear against the small constituencies, that all practical barriers in favour of secrecy might be broken through.*

SECTION V.

LAW REFORM.

The promulgation of the Laws is a prominent subject in a great proportion of Bentham's works. He held that a rule of action which the person whom it was to affect could not make himself acquainted with the purport of, was worse than no rule—a despotic arrangement for enabling one man to be cruel to another—a project for catching people in traps, for the advantage, or it might be the amusement, of those who set them. The defects which the English system exhibits in this respect, have had their origin in the neglect of the utilitarian principle—the neglect, in the preparation and execution of the laws, of the very object for which those who make them would admit that they should be made—the good of the community. The ultimate object, for instance, of the criminal law, is to do good to mankind by the prevention of crimes. The immediate object is the punishment of individuals committing crime. In the discharge of this latter object, the former and ultimate one has been frequently forgotten. A man commits a breach of the law—he is punished, and all concerned consider they have done their duty, and trouble themselves no farther. The criminal says, that if he had been aware of the existence of such a law he would not have broken it ; but he is answered by the old adage, *ignoratio juris neminem excusat.* Presuming him to speak the truth, is it not an immediate inference, that it would have been better had the offence never been committed at all, than that, having been committed, the perpetrator is punished ?

It is a feature, too, of unknown laws, that they have to fight society by detail. When it is known to the public at large that the commission of a given act will be met by a specific punishment, they, in general, take the alarm collectively and abstain from it. They know, perhaps, that if they all break the law in a mass, they could not all be punished ; but, like Fielding's mob confronting a man with a cocked pistol, no one of them is assured that he may not be the victim. But a hidden law is a poignard—none know of the presence of the deadly weapon but those who are stabbed by it, and their immediate neighbours. Such a law will often exhaust the power of its administrators before it produces any palpable effect. There are abundance of victims, but there is little proportional amendment.

There are two means by which the laws may be brought within the reach of those whom they bind. The one is by making them in themselves simple, concise, and uniform : the other by adopting adventitious means of promulgating them. In both respects there are many defects in the

* See Works, vol. iii. p. 569 ; ix. 109.

law of England. The common law, which is the result of the traditionary lore of ages, is in the position of the books of the Roman law before they were digested under the superintendence of Tribonian,—a mass which defies the industry of any ordinary lifetime to master its contents. Its bearing upon any given point, instead of being contained in an enunciated command by the legislature, is to be solved by the interpretation of multitudes of unauthorized comments, or conflicting decisions. It possesses the additional evil, that, even when its tenor seems to be comprehended, no man can tell whether what he has so come to the understanding of be in reality the law; for it has received no authoritative sanction from any legislative power, and is only the opinion of certain unauthorized commentators.

The other main department of the law—the statute law—is indeed the command of the authorized legislature: but it is a command perplexed by unintelligible language, confused, gigantic in its proportions, and deficient in internal facilities for reference and discovery. When a law is to be altered, there is an act passed, "to amend an act," &c.; when there is another alteration, there is an act passed, "to amend an act—to amend an act," &c., &c. There is a popular method of referring to acts of Parliament as being such a chapter of such a session (*e. g.* the act 57 Geo. III. c. 101); but when reference is made in the amending statute to that which is amended, there is no such abbreviated mode adopted,—the act is described by its title, so that it can only be found by a search among all the acts of the session. In popular language too, the acts are divided into sections, which are numbered consecutively: but this facilitation is unknown in law, and consequently the section of an act, when an alteration of it is made by any subsequent act, is only referred to by vague description. In one session of Parliament there are frequently upwards of a hundred acts passed, and many of these will be found to contain upwards of a hundred sections; yet when, in a future session, there is an alteration made on one of these sections, it is only singled out from the mass in the vague manner above described. It will generally happen, that some members of the official establishment chiefly connected with the operation of any series of statutes will have mastered their contents; while the public in general are profoundly ignorant of the whole subject, or know it only in so far as they may have suffered by making mistakes. Yet there are collections of statutes so extensive, that it may be questioned if even those official persons whose peculiar duty it should be to enforce them are well acquainted with their contents. There are at this moment (1842) upwards of 130 statutes, more or less in force, in relation to the Stamp Laws.

The main remedy proposed by Bentham for the evils arising out of the confusion and bulkiness of the laws, is in codification,—in a general revision of the existing laws, the rejection of the antiquated and useless portions, and the reduction of those parts which should be preserved, to a clear order, and to precise and intelligible language. The chief objections to this project are not in the form of argument, but in the simply negative shape of the neglect to perform that of which the utility is so clearly proved. The good to be accomplished would be great; but the labour too would be great; and no Atlas has been found among ministers of state to put his shoulders to the task. Nor does there seem, indeed, to be any individual on whom the responsibility of the non-performance of

this mighty task can be specially thrown—it is simply a great and difficult project, for the public benefit, unperformed.

While urging the utility of a general Code, and the importance of a complete or partial reconstruction of the law, Bentham did not lose sight of the immediate practical advantages of an improvement in the system of drawing the statutes, so as to make them more intelligible to the public, and consequently more serviceable as rules of action. In an examination of the vices of the existing method of drawing acts of parliament, he found that there was a departure from the common colloquial and literary language of the country, which, instead of diverging from it in the direction of precision and conciseness, led to vagueness and verbosity. The departure from the ordinary forms of expression was thus an evil, not compensated by any advantage in the shape of a more scientific style. He found that there was unsteadiness in respect of expression, occasioned by a want of fixed words having definite ideas connected with them. The draftsman, not having in his mind any distinct nomenclature, overloads his work by employing a number of words to mean the same thing, lest, if he should restrict himself to one, he might choose one which did not fully embrace the meaning intended. In this manner, that which could have been well accomplished by the use of one word with a determinate meaning, is imperfectly accomplished by the use of several words without any fixed signification. Thus, there frequently occur such pleonasms as "all the powers, authorities, methods, rules, directions, penalties, clauses, matters, and things," "use, exercise, apply and put in execution," &c.,* all referring to the same thing, but by their number rendering what they refer to more vague instead of more clear. It is an additional defect referable to this source, that when the same thing is thus mentioned more than once, the collection of words by which it is referred to does not happen to be precisely the same on each occasion, and thus dubiety is created in the mind of the reader.

It was found that clauses of acts, instead of consisting of separate enactive propositions each with its own verb, constituted, each of them, a series of sentences heaped together, the same verb serving for a variety of propositions. The bad effects of this system are two: it makes the sentence too long for full and clear apprehension by ordinary intellects; and it renders it liable, from its complexity, to dubiety and ambiguity of interpretation.†

So much with regard to those internal qualities in the construction of the laws, which might serve to make them accessible as a rule of action. An external means of accomplishing the same end, is, in the Promulgation of the laws when they are enacted, among those whose obedience they demand. Bentham looked upon this service as one of the most unexceptionable in which the public money could be employed. He considered that every practicable means should be adopted for bringing before the eyes of the citizen the laws he is called on to obey, and that, in their distribution, profusion is the safer error. He thought that so much of instruction in the laws as could be conveyed to the mind in youth should be taught in schools, and that the books in which the laws are printed, if not given gratuitously, should be purchaseable at a merely

* Quoted from the Income Tax act, 5 & 6 Vic. c. 35.

† See on this subject, the extracts, *supra*, p. 181 *et seq.*

nominal price. He proposed that the portions of the law which affected particular classes of persons should, separately from the general body of the law, be distributed among those whom they particularly affected. Thus, each soldier on enlistment should receive a copy of The Soldiers' Code,* and each mariner on joining his profession should receive a copy of The Seamen's Code.† An individual conducting a trade subject to the operation of the Revenue laws, should, on the same principle, have a copy of The Revenue Code.

He proposed that each separate description of contract should have a species of paper set apart to be used in embodying its terms ; and it was one of the services to be accomplished by this arrangement, that the paper should contain on its margin, an abridgment of the law relating to the contract. In markets and other places of public resort, the peculiar regulations of which might be of sufficient brevity for being so promulgated, the old Roman system should be adopted, of having them legibly set forth on tables adapted to public inspection. In Courts of justice, the forms of Procedure, and the respective duties of the Judges, the Officers of Court, the Lawyers, Parties, Jurors, and Witnesses, should be exhibited in the same manner.‡

To enable the public the better to comprehend the full tenor and object of the laws when promulgated, he proposed that they should be accompanied by a *Rationale* or series of reasons. The necessity of adopting such a course would, he maintained, make the laws themselves more rational ; for legislators, being bound to give reasons to the public, must have reasons to give, and would not be likely to frame laws on the dictate of caprice or tyranny. An acknowledgment of the principle is to be found in the Preambles of Acts of Parliament ; but as in this case there is only one general reason given for the tone, as it were, of the whole statute, and not a reason for each individual enactment, the check is, necessarily, very imperfect. Having the reasons along with the laws, the public, it is believed, would not only have more confidence in the justice of the enactments, but, seeing their application, would have a guide to honest and sincere obedience, which the simple terms of the command conveyed in the law itself might fail to provide them with. There have been many breaches of law that would never have occurred, if those who had committed them had been reasoned into the opinion that the laws were just.§

The principles on which the judicial establishment of a country should be founded, occupied Bentham's mind from an early period of his life to the end of his days. In 1790, he published the draught of a Code for the organization of the Judicial establishment in France ;‖ and the arrangements there suggested only differ in their being less fully developed, from those which he embodied in the Constitutional Code,¶ at different

* See works, vol. ix. p. 355.

† Ibid. p. 412. This arrangement is proposed in conjunction with a Plan for registering merchant seamen, and for defining their duties and the power of their officers. The principle of these suggestions has been realized in the Merchant Seamen's Act, 5 & 6 Will. IV., c. 19.

‡ See, generally, as to the Promulgation of the Laws, Works, vol. i. p. 157 *et seq.* ; iv. 455 ; vi. 65, 522, 578.

§ See Works, vol. iv. pp. 454, 491, 538; viii. 517; ix. 1.

‖ Ibid. vol. iv. p. 285. ¶ Ibid. vol. ix. p. 454 *et seq.*

times subsequently to the year 1820. In both, there is a system of Local courts, for the purpose of bringing justice as near as it can practicably be brought to every man's door; the general principle of admeasurement being such as will allow every inhabitant of a district to go to and return from the judgment-seat in one day. In both works, and in almost all his numerous works on Law Reform, he desired that justice should be administered in each court by a single judge, for the reasons of which a sketch has been given in the preceding Section in connexion with responsibility. (See p. 373-375.) He thought that the habits of a practising lawyer, keeping the mind in a constant state of active partisanship, did not form a suitable school for judges, whose duty it is to hold the scales of justice with a steady hand. On the other hand, he considered, that permitting any class of men, not trained to the study of law and the weighing of evidence, (*e. g.* justices of peace and municipal magistrates,) to administer justice, was nothing better than a permission to one section of the community to sport with the property and liberties of all others. His own plan contemplated the education of a class of lawyers for the bench. He suggested the appointment of deputes to the regular judges; and, through the instrumentality of this arrangement, he would provide for those who have been induced to fix upon the bench as their profession, getting an introduction, and the opportunity of practice and experience, as assistants in the lowest grade, rising thence according to their abilities and exertions.* He held that the judgment-seat should be accessible at all hours of the day and night—that justice should sleep only when injustice slept. To provide this accessibility at the smallest cost, is the object of many minute provisions in the Constitutional Code.† The delays occasioned in England by the system of circuits and vacations, are the object of repeated and severe denunciation.‡

A common feature of both his earlier and later works on judicial reform is, the appointment of Public Prosecutors, and of Advocates for the Poor.§ The latter proposition is connected with the view, that justice, instead of being sold to the highest bidder, should be presented gratis, whenever this can be done without preponderant mischief. The evil that might occur from offering the assistance of the law to every one who might desire it, without cost or personal exertion, would undoubtedly be the entailment on the community of ceaseless lawsuits, carried on by all its litigious members. On the other hand, there is the consideration, that it is not he who gains it only who profits by a lawsuit, but that the public have an advantage, in the establishment of a precedent, and the exhibition of justice vindicated. The expense of employing lawyers in the vindication of a just claim, is of itself sufficiently oppressive: the addition of taxes on law proceedings, and fees to the court and its officers, is simply the taking advantage of an opportunity for pillaging the oppressed. The opinions of Bentham have been so far conceded to, that taxes on law proceedings have been abolished, and that fees have been, in almost all the courts of the empire, much reduced. Still the nation

* See Works, vol. ii. p. 22; iv. 357, 368; ix. 544 *et seq.*, 592.

† Ibid. vol. ix. p. 515 *et seq.*; iv. 356.

‡ Ibid. vol. iv. p. 336; vii. 243, 371 *et seq.*

§ See above, p. 303-4, and Works, vol. iv. p. 354 *et seq.*, 384 *et seq.*; ix. 516 *et seq.*, 570 *et seq.*, 577 *et seq.*

does not provide sufficiently for justice being done to the helpless. When a man, because he cannot afford to pay for it, is denied the service of the law to procure justice, it is proclaimed that the nation is still only on its way from that state of things "where he should take who has the power, and he should keep who can."*

He considered the system of having different courts for the adjudication of different classes of causes, to be most perniciously productive of complexity and expense. The division of the English system—a division happily unknown in Scotland and in the rest of Europe—into common law and equity, afforded him a flagrant exemplification of the evil, which will be found illustrated in several of the passages in the preceding selection. (See p. 131 *et seq.*)

With regard to trial by jury, on which he has written much,—partly in relation to the best method of reforming it, and partly for the purpose of rationally limiting its operation,—he was of opinion that, in the case of criminal charges, it was a necessary protection ; but that the existing system demanded many reforms, and among others the discontinuance of unanimity, and the abolition of the Grand jury. In civil actions, he thought the operation of the system should be much restricted. He objected to the unbending rule which forces the case before a jury, when both parties might prefer the decision of a judge. He considered that the part which a jury has to act—that of a committee of the citizens at large to watch the operations of the bench—need not be so palpably exhibited, and that it might be presumed that the judges have honesty and public spirit enough to do right, without the constant presence of so imperative a check. In a country where there is publicity for justice, and a high tone of public opinion, he believed that supervisance, especially if added to the influence of the appeal system, would make judges cautious, and would secure a nearer approach to clear substantial justice, than can be found in the oscillations of the jury system. He proposed then, that in ordinary civil cases, the jury should be had recourse to only in the way of appeal,† —a plan by which, while no one who wished to have his case judged "by his country," as it is termed, could complain that the boon was refused him, the number of jury trials, and, consequently, the expense of the system, would be much diminished. In the Constitutional Code, the juries, under the republican system there promulgated, are merely to be assessors to the judge, under the title of Quasi-jurors.‡

The method of so conducting the proceedings of the courts of Law, that they might administer justice accompanied with the smallest possible amount of delay, vexation, and expense to the litigant, is a subject referred to in almost all the works of Bentham, which bear on law reform. One work, the "Principles of Judicial Procedure,"§ is devoted to the organization of such a system. The various facilities for coming rapidly at the knowledge of the question at issue, keeping up a communication between all the parties concerned in the discussion, securing obedience to the decision pronounced, &c., cannot be here enumerated ;‖ and it will be impossible to go into detail beyond a slight glance at that principle

* See Works, vol. ii. pp. 211, 431, 573 *et seq.* ; vii. 199.
† See Works, vol. ii. p. 122. ‡ Ibid. vol. ix. p. 554 *et seq.*
§ Beginning of vol. ii. of the Works.
‖ In connexion with the subjects of Evidence and of Punishment, some of the views in relation to procedure are elsewhere incidentally noticed.

of personal responsibility, which peculiarly characterizes the whole system. As the public interest requires personal responsibility on the part of all public officers, so does it on the part of those who, by an appeal to the law, exercise the privilege which every one should be possessed of, of demanding the performance of judicial services—in other words, of litigants. To this end it is a leading principle of judicial procedure, that litigants should be confronted with their judges and with each other, that they should be questioned as to the statements on which they found, and that they should be made responsible for falsehood, whether it be uttered with the deliberate design of deceiving, or be rashly stated without that amount of consideration which a man gives to his words when the consequences of a mistake fall upon himself. The litigant is to be entitled to employ a professional assistant ; but grades of professional lawyers transacting different departments in lawsuits—as represented by barrister and attorney in English practice—are objected to. In an ordinary English lawsuit, the country attorney receives his client's communication, and transfers it to the town attorney, who communicates it to the barrister. From the variety of the channels through which the history is thus communicated to the judicatory, impediments are created to the discovery of the party who may be the author of any falsehood that may have been uttered ; and there is a general frittering away of responsibility for the proper conduct of the cause. Let the party himself be accessible when wanted, and let him have but one adviser between him and the judge : falsehoods will then be easily traced to their source, and being so traceable, will not be so readily committed.*

SECTION VI.

PRINCIPLES OF PUNISHMENT.

The end of punishment is the prevention of crime ; and all punishments inflicted under any other impulse, are wasted, or run the risk of being so. There is no other criterion of punishment which can be a fixed one. There may be mistakes and disputes as to what description of punishment is in reality best calculated to prevent crime ; but with this principle in view, reasoners have a common field of argument ; and the course of experience, enriched by the collection of statistical facts, will check aberrations, and bring the disputants more closely to each other in their mutual approach to accuracy. Those principles of punishment, if they can be called principles, which are involved in popular dicta, are as vague and indefinable as the human mind is various in its passions and

* In the operations of Procedure, various incidents are found which tend to fritter away personal responsibility. Thus, witnesses examined on affidavit (see above, p. 272) are represented in the minutes of evidence in the third person ; and there is thus an article of confusion introduced into the record, which prevents them from determining whether their evidence is accurately minuted or not.—See Works, vol. vi. p. 439.

prejudices. The simple word "ought," sometimes involves the whole of the principle expounded. Murder *ought* to be punished with death. Forgery *ought* to be punished with death, &c. The supporters of a ministry will say, "sedition ought to be punished with transportation," because they wish to humble and persecute their opponents. The opposition will say it ought not to be so punished—wishing to protect their friends from evil. When a riot takes place at an election, the party injured says the conduct of the mob was "dastardly brutal and ruffianly, and a parcel of them should be hanged:" while the opposite party "are far from vindicating the conduct of the rioters; but it was a mere petty ebullition of party spirit, and a few days' imprisonment will be a severe enough retribution."

But it is not only in offences of a political character that the divergencies of the popular principle of punishment are exhibited. Each man, with his mind concentrated on his own interest and pleasure, holds all offences that militate against them as the most atrocious with which society can be visited; and when he has the power, he acts the Nero and Domitian, and exterminates those who give him trouble. Thus is it that the landholders of England, being resolved, at all hazards, to preserve to themselves the sports of the field, and having the power, through their preponderant representation in parliament, of making what laws on the subject they think fit, have enacted a code of game-laws, which renders the preservation of the lives and morals of the people secondary to securing the monopoly in the destruction of hares and pheasants; and makes provision that the country should become depopulated by the transportation of criminals, rather than that the squire's preserves should be thinned.

When an attempt is made to involve the popular feeling on the subject of punishment, in a proposition or principle, it does not in general become more reasonable. It is said that the punishment "should be equivalent to the offence;" or "should be of the same character as the offence;" or "should be like the offence." There are no two things which less admit of real parallelism (however much they may of imaginative) than punishments and offences. Of two persons, precisely in the same rank of life, and of the same bodily frame, the one gets the other held down by accomplices, and inflicts on him certain blows with a stick. In this case it might not be difficult to assign a punishment precisely the parallel of the offence. But take another case. A thief puts his hand in a banker's pocket as he is returning home from business, and extracts therefrom a bundle of bank-notes. Where are the elements of similarity, in the position of the two parties, out of which a punishment similar to the offence can be created? Nor, if the problem of finding a parallel could be solved, does it appear very distinctly how the public could be benefited by the elaboration of such a specimen of curious uniformity.

But another principle of punishment, and by far the most common, (for it has existence in many a bosom which is unconscious of its presence,) is retaliation—in other words, revenge, or obedience to the impulse of wrath. The case of an election mob cited above, may serve as an illustration. The principle of retaliation is frequently vindicated, as if it could be reduced to a fixed rule: but how can it be so, since, as has been already shown, there can be no parallelism between punishments and offences? For the very small number of cases which occur, exactly

in terms of the instance of assault above cited, it would be easy to fix the rule of retaliation, by making the punishment identical with the offence. But who is to make a rule of retaliation for the banker robbed of his notes? The legislator has the whole field of inflictions out of which he may choose one which shall be a retaliation, and it is needless to say that his view of retaliation will be whatever his passions dictate. If the legislature should consist entirely of bankers, when he who has been robbed joins his peers with an empty pocket and inflamed passions, which sympathy and common interest propagate through the assembly, the retaliation, it is easy to believe, will be fierce and crushing. If the legislature should consist entirely of spendthrifts and pennyless younger sons, the sympathetic excitement would not be so intense, and the punishment would be more reasonable. If the legislature should consist of blacklegs and pickpockets, the worthy banker would be laughed at, and sent about his business. This last result, intended to exemplify the fallacy of any appeal to parties interested in an injustice, is not without a modified exemplification in this country. Bentham repeatedly refers to the exemption of real property from simple contract debts—the power of landed proprietors to undertake pecuniary engagements and protect their property from being seized in fulfilment of them. It was not until after his death, that this anomaly was partly rectified. *

It has to be noticed, that the retaliatory and other barbarous principles of punishment have produced counter-fallacies among those who have been groping about for the sound principles of punishment, and have been unable to find them. Thus, those who have an indistinct view of the defects of the punishment of death, say, "You are not entitled to deprive any man of the life which God has given him;" or, perhaps, "you are not permitted to take life, but for the crime of murder." It is to capital punishment that the question of title is thus usually restricted; but sometimes it is extended to others—thus, "you are not entitled to make a slave for life of a man born free," &c.—the term, "for life," being generally inserted, because, if the punishment of slavery or the restriction of liberty were abolished, it would be difficult to find a means of inflicting any punishment on any one who has not palpable property capable of being seized. In the utilitarian system, the question of title is very simply disposed of, by striking the balance of good and evil to society at large. If there are cases in which the infliction of the punishment of death leaves a balance of good—that is to say, if more evil would be done to society through the inducement to crime that would exist were the punishment more lenient, than the evil occasioned by the infliction of the punishment—then let death be the allotted penalty. It will be for every man who has anything to say in the legislation of his country, to examine the question according to his abilities, to strike the balance, and to act accordingly. The conclusion come to by a member of the legislature will bear strongly on the result; that of an elector will have less effect, and that of a non-elector whose influence on the legislature is merely that of reasoning, will have still less: but it behoves them all, as members of society, to take the same method of coming to a right judgment.

It has been already remarked, that the Utilitarian Philosophy, like

* See Works, vol. v. p. 533; vi. 85.

the Baconian, has not tended so much to point out any perfectly new direction to the human intellect, as to keep it steady in a course of which it had previously but a slight and vague knowledge, and from which it was every now and then straying. There is perhaps no department of the subject in which this is better developed, than the philosophy of punishment. On appealing to a moderately-educated man in any civilized country, he would probably be found to admit, in some vague or general terms, that the object of punishment is the repression of crime. Yet so far have men, in the pursuit of their secondary ends, lost sight of this, the main one, that in England it became a general feeling, that it mattered not how many murders were committed, provided some one were hanged for each. Of the legitimate results of a scientific inquiry into the subject on the utilitarian principle, such as that carried on by Bentham and his disciples, the improvements which, for several years past, the legislature has been making in the administration of criminal justice, are so many illustrations.

In calculating the proper weight of punishment, the first element that comes into consideration is the offence. When it is scientifically examined, an offence is found to consist of more elements of evil than those which directly meet the senses. Bentham found a simple method of classifying the evils of a mischievous act, by dividing them into the primary and the secondary. * A man is murdered on the high-way: the death of the individual is the primary evil. The secondary evils arise out of the danger there exists of other people being murdered either by the same man, or by others following his example, and the alarm so occasioned in the neighbourhood. But it depends on a number of minute circumstances, what will be the extent of this danger and alarm, and, as a consequence, what will be the best legislative measures for protecting the people against them,—and hence arises Bentham's scientific analysis of crimes and their results, and his rules for adapting the punishment to the exigencies of each occasion.

To this end, in looking at the consequences of a mischievous act, among other circumstances, the following are kept in view: 1st, The state of the actor's mind as to voluntariness or involuntariness. Thus, deliberate murder shows a disposition at war with mankind, from which any one may suffer who is in the position of supplying the assassin with a sufficient motive; while death, occasioned by carelessness, shows a want of respect for life, which the public must protect itself from; and uncontrollable accident is a source of mischief which punishment cannot protect from, and as to which its infliction would be thrown away. 2d, The motive of the offender. Thus, the motive of acquisition being in continual action, is found to be the most dangerous. When a man slays for vengeance, he only strikes his enemy; if he be allowed to go unpunished he will be prepared to slay some one else, but not till there has been a cause of enmity. The example of his impunity will encourage others to slay also, but only their enemies. But when a man murders for the sake of robbery, he acts on a motive which all men feel more or less towards all others; and those whom impunity encourages to follow his example, see victims in all of their fellow-beings who have anything to be deprived of. Other circumstances to be held in view are, the situation of the per-

* See Works, vol. i. p. 69 *et seq.*, 215 *et seq.*; vi. 535.

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petrator in regard to the means of repeating the act, his means of concealing such acts, his means of escape, the obstacles he has overcome, the extent of temptation which was necessary to induce him to combat with them, &c. The position of the party injured must also be taken into view. Females, children, and invalids, require protection from acts against which able-bodied men need none. The poor require protection from injuries to which the rich are not liable,—such as oppressive litigation. The rich, on the other hand, have their peculiar demands, chiefly arising from the superior amount of their property, on the protection of the law. There are, besides, many other circumstances in which the richer and higher classes of society are subjected to evils which do not fall on the lower. Their tastes and habits are more fastidious, and should be protected from wanton outrage. They possess a greater proportion of objects in which there is a "value in affection,"—such as heir-looms, old pleasure-grounds, &c.; and the law ought to look on these as having a value beyond their mere intrinsic worth.*

When the extent of the evil to society occasioned by each offence, has been as accurately estimated as human knowledge and reason admit of its being, the counteracting power, in the shape of punishment, has then to be graduated accordingly. And here it has to be kept in view, that the infliction of punishment is itself an evil—an evil not only to him on whom it is inflicted, but to the community by which the trouble and expense of inflicting it have been incurred. Every item, therefore, of punishment, beyond what is necessary to the production of preponderant good, is punishment wasted—is a wanton act of mischief—is a crime. If it can be proved that an offence can be suppressed by the infliction of a year's imprisonment, and that the extension of imprisonment to two years will not make the suppression of it more complete, or tend more to the benefit of the public,—then is the imposition of an imprisonment for two years, instead of for one year, a wanton act of injury. It is seldom that the superfluous punishment is designedly added to the necessary: the whole is generally awarded in rashness and ignorance, and thus resolves itself into the minor offence of a want of due care for the welfare of the public. Who shall justify the infliction of a year's imprisonment, wantonly inflicted upon a man, though he be a criminal? If a justification be offered, let the following case, for the sake of distinctness, be taken. A man is tried for an offence, and the adequate punishment awarded against him is a year's imprisonment. When he leaves the prison, he is again seized, and subjected to another year's imprisonment; not because he has committed any fresh offence—not because his previous punishment was inadequate—but because he has been a criminal; and such a person may be punished, just as the prejudices and passions of those who administer the law may dictate.

The penal code being an institution intended for the benefit of the public at large, and the public consisting of individuals, there are two classes of persons prominently interested in its administration, whose claims have been overlooked in empirical systems of criminal law—the criminals themselves, and the individuals against whom the crimes are committed. The principle of vengeance is at the root of the omission in both cases—the laws retaliate on the criminal, and the act of retaliation

* See above, p. 7 *et seq.*; 94 *et seq.*; 309 *et seq.*

is considered a sufficient compensation to the injured. The utilitarian system views the matter differently—conceives that the person who has been robbed is not a savage, who is to be satiated with the blood of his adversary—and enjoins the criminal to labour to the end of making compensation, so far as it may be practicable, to the injured party. With regard to the criminal himself, the punishment, on the principles above laid down, must not be more than what is necessary to serve the legitimate purposes of punishment. If, while he is undergoing it, the convict can be reformed, there is not only a positive good done to himself, but a benefit is conferred on society, by restoring to its bosom a useful and moral man, at the expiry of the period of imprisonment. If, along with the accomplishment of this object, and of compensation to the injured party, the criminal can be compelled or induced to work, so as wholly or partly to defray the cost of his imprisonment, there is a still farther gain to society, by the reduction of a heavy burden—a burden which has a tendency to weigh against the zeal of the public in the enforcement of the laws.

Looking beyond the individual himself, to the effects of his punishment on society at large, reason will be found for deciding that it should be exemplary. As this is the element from which it derives its quality of awing the public into obedience to the laws, there might at first sight seem reason for concluding that the punishment cannot be too severe for such a purpose ; but a little consideration will show, that it is its adaptation to this end that makes it chiefly of importance that the punishment, if brought up to the point which will be sufficient to deter by example, should not exceed it. Where punishments are not meted to offences, the criminal classes of the population see that the law hits at random ; and, with the characteristic improvidence of their order, they gamble on its chances. Moreover, where punishments are unpopularly severe, the people will not give their assistance to the enforcement of the laws. The annals of English jurisprudence present even the official guardians of the law—the judges, joining with prosecutors, juries, and witnesses, in saving the criminal. The punishment of death for forgery has strikingly illustrated this truth. At the present moment, the duellist, is confounded with the assassin who steps behind his enemy and secretly stabs him. The public feel that the duellist injures society and should be punished ; but they revolt at such a barbarous confusion of names and punishments : and the manslayer escapes by the connivance of the witnesses, the jury, the prosecutor, and the judge himself.

To deter others by the force of example, the punishment must, as nearly as human means can make it, follow the crime with the same regularity with which natural effects follow their causes. The *certainty* of imprisonment with hard labour will do far more in the way of prevention than the *chance* of suffering death. A proper allotment of punishment is one of the main ingredients in this certainty—others have been devised by Bentham, in his projects for the reform of criminal procedure.

It is necessary to the efficiency of the penal law, in the way of example, that the offence and the transactions concerning the trial and punishment, should not be encumbered with a barbarous technical nomenclature, which may shroud the real nature of the connexion between the crime and its punishment from the public eye. It is further necessary that the innocent should not be involved with the guilty—a result produced by

the forfeitures, and corruption of blood, (see above, p. 324,) of the English law. The punishment should be awarded in virtue of a fixed law, and should neither actually be nor appear to be, influenced either in increase or diminution by the will of an individual. Thus, laws awarding extravagant punishments, with a power of pardon or diminution, are unserviceable in the way of example. The punishment fixed by the law is either too high or not too high. If it be too high, it should be reduced: if it be not, the exercise of the pardon power, popularly called the prerogative of mercy, is an injury to society. Thus, wherever the pardon power is rightly exercised there is tyranny in the law—where it is wrongly exercised it is itself tyranny. (See p. 297 *et seq.*)

It is of the highest moment, for the sake of example, that the punishment should proceed, as far as may be practicable, before the eyes of the public. This object, as well as that of the reformation of the convict, is defeated by the plan of transportation to distant colonies. The criminal is removed from the sight and knowledge of those companions in iniquity to whom it is essential that his punishment, coupled with its cause, should be present as a perpetual warning; and instead of a lively consciousness of the sufferings and privation he is undergoing, experience too truly shows that they often envy his imagined lot, and raise day-dreams of independence and a wandering life in distant and fruitful lands, which serve a very different purpose from that of a solemn warning to depart from their evil ways. Another main object to be kept in view in punishment, is the avoidance of contamination. This is an evil which needs no farther explanation. At the time when Bentham wrote, the jails were academies for instructing the youth, whom a petty indiscretion or a small offence had driven to them, in the higher and more complex walks of crime. Many reforms have been made in this department of prison discipline: but the repeated complaints of the press show how much remains still to be done. (See p. 318 *et seq.*)

It was to accomplish these objects, in relation to punishment, that Bentham devised the principles of prison discipline, expounded in his work on the Panopticon. The plan of the building, which was to admit of an inspection of all parts from a central point, was suggested by the architectural ingenuity of his brother, Sir Samuel Bentham. In this institution the prisoners were, without being subjected to the enervating and uncivilizing influence of solitary confinement, to be kept from communication with each other. They were to be kept at hard labour. As unproductive compulsory labour for the mere sake of punishment is in itself uneconomical, has no influence in improving the criminal, and tends to sour and harden his mind by the daily recurrence of inflictions, which have no other end but his personal vexation, the convicts were to be taught useful trades, as an encouragement to work; and, that they might have some opportunity of knowing how pleasing are the fruits of honest industry, they were to receive a portion of the results of their meritorious and successful exertion. They were to enjoy the ministrations of religion, and, to a certain extent, to be educated. Provision was made to supply them with a sufficiency of wholesome food, to ventilate all their apartments, and to keep them clean. Various methods were propounded for keeping their intellects from being stagnant, or viciously employed, when their hands were idle. And, finally, to prevent their being thrown upon the world with a tainted character, which might, by depriving them

of the means of gaining their livelihood honestly, drive them back upon their old courses, arrangements were proposed for providing them with employment after their period of imprisonment had expired.*

But the founder of the Utilitarian system, looking upon punishment of every description as the application of medicine to a moral disease, goes back into the operations of the mind, that he may discover the causes in which the disease has its origin, and prescribe a regimen conducive to the preservation of the moral health of the public. In a system of punishment, he sees the political sanction only put in motion ; but he finds that the Religious, and the Moral or Popular sanction, have each their respective spheres of action, in which they may be employed to restrain the mind from vicious inclinations. It is not by its restrictive action, in regard to this or that individual offence, that either of these sanctions will operate in its largest shape ; but, by superinducing on the mind habits of thought so much opposed to crime, that when an opportunity of committing it occurs, the principle of restraint being an established feature in the mind, there is no actual struggle to resist the seeming temptation. In ordinary acquisitive crimes, the operation of the sanctions is strongly marked. To the greater portion of the well-educated and well-trained part of the population of Britain, an opportunity of committing a lucrative theft can scarcely be said to hold out any temptation ; and the question, whether detection and punishment would be likely to follow—*i. e.* whether the political sanction would be called into operation, is not considered ; for the religious and moral sanction have long ago fixed the course of action. Of the beneficial effects of the religious sanction, it is needless to adduce illustrations in a country where its influence is so strongly felt. As its good influences, however, are powerful, so are its evil, when it is directed to bad purposes. As an illustration of the extent to which the operation of the sanctions may be ramified, the serviceable employment of the moral sanction in the prevention of violent crimes, may be found in the practice of inculcating humanity to animals in children. Minds callous to one description of animal suffering will not sympathize with another ; and the murderer is nursed in the torturer of kittens. The knowledge of this truth is evinced in Hogarth's stages of cruelty, and in the popular belief that butchers are incapacitated to serve as jurymen. As already stated, Bentham was desirous that the legal sanction should be brought to the aid of the popular in this department, and that cruelty to animals should be restrained by strict penal laws.†

His works abound with the promulgation of secondary operative measures for keeping the population pure from criminal propensities, the majority of which, to a greater or less degree, have been, and still are, the subject of public discussion. Among the most prominent of them is National education. The system for the management of the poor, having for its end the drying up the sources of poverty, would, by the same operation, dry up the main sources of crime—(*see the next section.*) The arrangements for training pauper children—foundlings and the outcasts of society—would have the effect of subjecting a class, whose world of

* On the subject of Punishment generally, see above, p. 297 *et seq.* ; see the Works, vol. i. On the subject of the Panopticon, see vol. i. pp. 498 ; iv. 39 *et seq.* ; xi. 96 *et seq.*

† See Works, vol. i. pp. 142-143, 562 ; x. 544-550.

public opinion is the professional emulation of felons, to the restraints and superintendence of the better portion of society; and of giving to those, whose fate seemed to place them at war with honesty and the laws, an industrial interest in the wellbeing of their country, and in the administration of its justice. Calamity and disease are looked upon, independently of their own distinctive evils, as generators of crime; and it is in this view that their prevention appeals to the interests and self-preservation of those who are, or may think themselves, excluded from their influence. The officers nominated in the Constitutional Code, for preserving the public against accidents and calamities, for guarding the public health, and for removing objects which, from their being noxious to the senses, are both dangerous to the health and demoralising in their immediate operation on the habits,—are thus so many active agents clearing the moral atmosphere from the malaria which produces mental disease.*

SECTION VII.

POOR LAWS, EDUCATION, AND OTHER INSTITUTIONS FOR NATIONAL AMELIORATION.

At the time when Bentham devoted his attention to the Poor Law, (1797-8,)† the then existing system had proceeded for some years in that course of degeneracy from the strict principles of the statute of Elizabeth, which commenced with Gilbert's Act in 1782, and was consummated by East's Act in 1815. Long before he could get others to join in the opinion, he saw that any system founded on the principle of merely relieving suffering, and not containing within itself restrictions calculated to stem the growth of pauperism, would gradually undermine the industrial stamina of the country, by creating more pauperism than it relieved. Subsistence being, as already stated, (see p. 360,) one of the main objects of the law, according to his division, he thought it the duty of the legislature to provide a system which should obviate, as far as human foresight could, the chance of any human being suffering from starvation. In accomplishing this, however, it was necessary to keep in view the counter-error of giving a boon to indolence, by allowing the idle pauper to consume the wealth of the industrious and enterprising producer.

The method by which he proposed to adjust the proper medium, was the same in its leading principles with that which was lately sanctioned by the legislature, as the result of the searching investigation of the Commission of Inquiry,—the rigid application of the Labour test to the able-bodied, and the supervisance of all, by their location in buildings under the inspection of the officials and the public. He was able to foresee the evils of the strictly parochial system,—the comparative

* These subjects will be more particularly considered in the next section.

† See the Tracts on the Poor Law, Works, vol. viii. p. 358 *et seq.* See also vol. i. p. 314; iii. 72; ix. 13.

costliness, and propensity to jobbing in small local establishments,—the restrictions on the freedom, and consequently on the productiveness of labour by the settlement laws,—the abuses of all sorts that in remote districts might be preying on the vitals of society unobserved,—and the cruel hardships to which those whose position entitled them to relief might be subjected, from their not being on the right spot when misfortune overtakes them; and he contemplated the bold design of a uniform national system under central authority.

He did not propose that the central authority should be in the hands of official persons appointed by the Government. In all national institutions which involve receipt and expenditure of money, varying according to the success of the management, he advocated the contract system in preference to the stipendiary, as more economical and efficacious. His system of prison discipline, under the Panopticon plan, (see above, p. 388,) was to have been conducted under contract management, he himself being the contractor.* In the present case, his contractors were to be a joint-stock company, whose directors were to be the central board of management. Their funds were to consist in such poor-rates as it should be found necessary to levy, and the produce of the industry of the able-bodied paupers, with other contingencies. Their profits were to be so far limited, that while they might have sufficient encouragement for economical and energetic management, they should not be put in possession of the power of levying a poor-rate to provide extravagant profits to themselves. The Plan of Pauper Management—it is to be regretted that hitherto only a skeleton of it has seen the light—contains a multitude of minute arrangements for obviating mismanagement, preserving order, regularity, and good habits, educating the paupers, and generally elevating their moral standard,—which cannot be here enumerated.

In 1797, a Bill for making alterations on the Poor Law was brought in by Pitt. It is difficult to estimate the disastrous consequences which must have followed this measure had it been passed. A critical examination of it was written by Bentham, and sent in MS. to Pitt; and the fortunate consequence of this lucid demonstration was, the abandonment of the Plan. The general aim of this measure was simply an enlargement—and that a sudden one—of the pernicious principles which had been gaining ground for some years—that there was only one thing to be kept in view in a poor law, the satisfaction of all demands made upon the wealth of the community by its poverty, without asking questions; and that whatever deficiency appeared in the operation of the existing system, was to be simply remedied by conveying more of the money of those who had it to those who had it not. From the criticism on this measure some extracts will be found above, (p. 166-168.)

Bentham contemplated a system of poor laws as a means of removing out of the way the damaged part of the population, and of improving the improveable; and not as a mere provision for existing destitution.

* The history of his vexations and disappointments in regard to this project, will be found detailed in the Appendix to the Memoirs, (vol. xi. p. 96 *et seq.*,) and it is noticed in the Introduction to this selection. The chief objection which official persons appeared to find in the scheme was, that the terms were too favourable to the public to be practicable,—a feature for which either its Author's sanguine temper, or his practical sagacity must stand responsible.

In his eyes, therefore, it was a great moral engine which might be applied to various useful purposes. The most important of these was the suppression of vagrancy and mendicancy. His officials, holding out relief with the one hand, were to be entitled with the other, to treat all mendicants who refused to accept of it, not as persons who supplicated charity to relieve their wants, but as professors of the criminal trade of begging, and so amenable to punishment. It was part of his plan, that, until some responsible person should be prepared to answer for his following an honest calling, no beggar should be removed from the workhouse. The suppression of mendicancy would, it was believed, have a great influence in reducing the number of graver crimes. A disposal of all the vagrants of a country within workhouses, unless they find security to work elsewhere, would, undoubtedly, if it came into actual and satisfactory practical operation, have that effect which the Author anticipated from it,—of destroying the nests in which criminals are reared.

The great subject of National Education, for which Brougham has obtained a place in the public mind worthy of its eminence, may appear to some to be treated with indignity, when discussed as subsidiary to a poor law. Bentham, however, was of opinion that the education of the indigent is far more important, in the eye of the public, than that of the rich: more important, because it serves as an instrument of social organization, which the opulent will supply to themselves, on the voluntary principle; while the means of procuring a supply for the poorer classes, becomes a matter of public policy. In this view, as a system which must be provided for by an eleemosynary fund, he considered that National education was connected with the Poor Law.

The system proposed in the Plan of Pauper Management, unites both training and education. The Author had the sagacity to see, what has been in later times too often exemplified, that the seeds of the higher branches of knowledge cast into minds unprepared for their reception, may produce bad or worthless fruit. His great object was to redeem pauper children from a position in which, as outcasts from society, they were likely to remain during their lives either a burden on the charity of the community or enemies to its property; and to elevate them into the position of productive members. In a community where there are no unproductive members there can be no permanent paupers; and the very best form, in point of economy, which a provision for the poor can assume, is that in which it converts any class of persons from consuming to productive members of society. With this view, the principal end in the education of pauper children, after they have been taught the principles and practice of morality and religion, is to fit them for some trade by which they can make their bread, to train them in those regular habits which a respectable man finds necessary to his happiness, and to accustom them to value those comforts and appliances with which industry and regularity only will supply them. A portion of intellectual instruction should, of course, accompany this training; for, of all inducements which the man who labours with his hands can have to keep him from degrading habits, intellectual resources are the most potent. It is only, however, as accompanying the means of making a livelihood, and in connexion with well-regulated habits, that intellectual instruction can be calculated upon as serviceable to beings in the position of pauper children.*

* See Works, vol. viii. p. 395 *et seq.* The Report on the training of pauper children, presented by the Poor Law Commissioners in 1841, is a practical

The remarks which Bentham left behind him, on a proper system of education for the richer classes, are to be found in certain fragmentary essays, brought together under the title of Chrestomathia.* The work consists partly in an exposition of the benefits of intellectual instruction, partly in the description of a project for establishing a national school for the middle classes, and partly in an analytical examination of some of the departments of instruction suited to such an institution. He adopted, in a great measure, the system of division of labour suggested by Lancaster and Bell. There are several principles of tuition laid down, the main feature of which is, the establishing a rigid mental discipline in the minds of youth—preventing their thoughts from straying, and taking measures for ascertaining, with respect to the several steps of the progress, that nothing is left in a crude and undigested state, but that whatever is learnt is *well* learnt. It is generally as a discipline to the mind, that the devotion of so much of the time of youth to the acquisition of classical syntax, prosody, and etymology, is vindicated. There is no doubt that the operation of mastering languages, so philosophical in their structure, and so little capable of being made use of without a scientific acquaintance with them, as the Greek and Latin tongues, is in itself a powerful mental tonic. But if the same discipline can be accomplished by instruction in subjects more likely to be afterwards made practically available by the pupil, there would be undoubted economy in the change. Neither his own personal inclinations, nor his judgment, would have prompted Bentham to deny their due weight to classical studies. "He was a scholar, and a ripe and good one," in the ordinary sense of the term. He was partial to the Greek language, which he maintained to be, in its structure, the best suited for a scientific nomenclature. His partiality towards it has betrayed itself, in many of the titles of his works—witness the Chrestomathia itself, (χρηστομάθεια the study of useful things,) Nomography, Deontology, Pannomial Fragments, &c. To his case, therefore, the common remark, that none attack the so generally conceded supremacy of ancient learning, but those who have not had the good fortune to receive a classical education, does not apply.

To those who take much interest in the teaching of the higher branches of knowledge, the Chrestomathia, though only a collection of fragments, must convey many useful hints, from the clear manner in which every branch of instruction is separated from all others, and each is presented in its turn as a topic to be separately exhausted.

The subject of the education of the higher classes of society, has, from a natural analogy, been here treated in juxtaposition with the means of training and instructing the children of the poor. The main object of the present section, however, is to glance at the subsidiary legislative measures for internal organization and improvement contemplated by Bentham; and to these it is now necessary to return.

The concluding chapters of the Constitutional Code, contain a multitude of minor arrangements for purposes of public utility, of which the general Registration system is, perhaps, the most conspicuous. Legislation has

adaptation and illustration of Bentham's opinion. It is to be regretted that the commissioners have not been enabled to carry out their practical application of the system to the extent which appears to have been contemplated by them.

* See the commencement of vol. viii. of the Works.

made a great stride in relation to this subject since Bentham wrote. He had to suggest the system of a uniform Register of births, marriages, and deaths; so arranged, that the making entry in the register should not depend on the choice of individuals, but should be imperatively enforced. He viewed such a general register as a grand store-house of facts, applicable not only as evidence for legal purposes in relation to the persons appearing on the register, but as providing a fund of vital statistics, upon which political economists might reason, and the legislature act. To make the vital statistics serviceable, in relation to the influence of trades, habits of life, places of residence, &c., on health, he suggested that the professions of the parties should be entered, and in the entry of each death, the disease or other occasion of it. Those who are acquainted with the general Registration act for England, (6 & 7 Will. IV. c. 86,) will recognise it as founded on the principles laid down by Bentham, as they appear in the Constitutional Code.* The part of the code in which they appear, was not published until after that act had passed, but they had been for ten years promulgated in the Rationale of Evidence.† At the time when the Bill for England was under discussion, a similar measure was brought in for Scotland; but it was opposed by the clergy, was dropped, and has not been revived.

The Registration system in the Constitutional Code embraces other elements, which have not been yet experimented on—a Record of arrivals at the age of majority, and of lapses from, and restorations to sanity.‡ The proposal of a General Register, applicable to Real property, and to contracts and other transactions, did not originate with Bentham. The system has been illustrated in Scotland and in France, and partially even in England; and efforts have been made by practical statesmen, of whom Oliver Cromwell was, perhaps, the first, and Lord Campbell has been the last, to put the system in practice on a wider basis. The importance of such a system, and the best arrangements for its operation, are fully examined in more than one of Bentham's works. §

In the Constitutional Code, provision is made for a public officer, whose duty it is to perform those remedial functions for the public, of which the want is so often felt in a thickly-peopled country, and which magistrates and police authorities cannot easily fulfil. Among the multifarious duties assigned to him, is the settlement of momentary disputes with coachmen, innkeepers, porters, &c., The traveller is much at the mercy of these classes, who, in respect to judicial control, readily distinguish, for their victims, those who will not have time or opportunity to follow up an inquiry. The principle of interference in such cases is no infringment on freedom of trade and labour. The object of all just regulation on the subject, is, not to compel the hirer to employ for, or the hired to work for an arbitrary price, but to settle, by regulation, terms which parties are presumed to accept of when they make no specific stipulation. The Local headman has many other, perhaps more important spheres of action. He is to give information to parties wishing to be acquainted with the wages of labour and the means of living, &c., in his district, to give friendly advice in disputes, explaining the probable results of an appeal to the Law, &c. ‖

* Works, vol. ix. p. 625 *et seq.*
† Ibid. vol. vi. p. 566 *et seq.*
‡ Ibid. vol. ix. p. 630-632.
§ Ibid. vol. v. p. 417; ix. 634; x. 350.
‖ Ibid. vol. ix. p. 612 *et seq.*

The Health-minister has important functions assigned to him in the Constitutional Code. In conjunction with the Indigence-relief minister, he has control over the medical officers of all eleemosynary institutions. He exercises the appropriate functions in hospitals for the sick, lunatic asylums, and prisons. The object in view, in the appointment of such an officer, is to have, in the shape of instruction, direction, and control, the application to the operations of inferior officers, of that skill which can be purchased by high pay and official distinction. This officer is to have other powers for protecting the public health. He has to see that there is a proper supply of water for the public use ; to take cognizance of all means by which the public health may be injured, by overcrowded buildings, undrained lands, places of interment, and noxious manufactures ; he is to exercise, indeed, in general, the functions of a central officer for the enforcement of sanatory regulations. *

In the tracts on the Poor Law there are various minor suggestions for increasing the comforts, and raising the tone of character, of the working classes. The extent to which those who are better informed, and have larger influence in society, may aid them in counteracting their besetting sin, improvidence, is strongly urged. In the Pauper Management, a plan is suggested for the establishment of Frugality Banks,† the main features of which have been adopted in the legislative establishment of Savings Banks.‡ At the time when he wrote, Friendly Societies had received but slight aid from the legislature, and were subject to all the risks, inconveniences, and miscalculations, which the operations of small bodies of uninstructed men would naturally entail on them. Their vital calculations, founded on imperfect data, were generally erroneous ; and it frequently occurred, that a society which, at first, appeared to be prosperous, became exhausted before it met the claims of those who, having longest contributed to its funds, had the best equitable claim to its benefits. The meetings could be held nowhere but in public-houses ; and thus the practice of frugality was attempted to be commenced in the midst of those inducements to excess which are its greatest enemies.§ These evils re-

* See Works, vol. ix. p. 443 *et seq.* It would be an injustice to that friend of Bentham who has so thoroughly laid before the public the grounds on which Sanatory Legislation ought to be based, to allow it to be presumed that the Constitutional Code contains on this subject anything beyond simple suggestions as to the general subjects to which the regulations should apply. The suggestions might have remained unnoticed like many of their author's other valuable hints. The public owe the full inductive sifting which this subject has received solely to Mr Chadwick, some of whose remarks on sanatory regulations, written long before he could have anticipated an opportunity of bringing forward his views in an authoritative form, were quoted by Bentham as illustrative matter for the Constitutional Code. See Works, vol. ix. p. 648.

† See Works, vol. viii. p. 407 *et seq.*

‡ It is a singular illustration of the smallness of the extent to which the very valuable tracts on Pauper Management have been perused,—probably from their having been published only in a periodical work, (viz., "The Annals of Agriculture,") that the first suggestion of Savings Banks is almost universally attributed to the Proposals circulated by Mr Smith of Wendover, two years after the publication of the Pauper Management. In that work, instead of the few crude suggestions with which such projects generally commence, the whole system, with its deferred annuities, and other characteristics, will be found to be distinctly explained.

§ See Works, vol. viii. p. 410 *et seq.*

ceived no correction till they were prominently exposed by the select committee appointed in 1825.

The facilitation of the transfer of small sums of money from place to place, is urged, in the Pauper Management, as an important adjunct to frugality and commercial integrity.* The plan has been practically adopted in the system of Post-office money-orders.

Though he could not be said to have made any approach to the valuable discovery of Mr Hill, Bentham so far anticipated the modern opinion of the functions of a Post-office, that he viewed it, when established on proper principles, as an institution fraught with internal improvement—with the progress of knowledge, the nourishment of the social virtues, and the facilitation of trade. He thought it ought to meet with encouragement from the legislature, and that it ought not to be a source of revenue.†

On the enlightening and civilizing influence of the press, he wrote at more length.‡ He considered the editor of a newspaper as the admitted president of a department of the public-opinion tribunal, viz.—that portion of the public who support, or are directed by, the opinions of the newspaper. He was a friend of the perfect freedom of the press—that is to say, of the principle, that those who write in it should be permitted to say precisely what they please, subject to punishment for every offence against person, reputation, or property, which they may commit through a newspaper, just as if they had committed the same offence through any other means. The English law of Libel he considered despotic and capricious. Its principle is, that every man who finds anything in print which offends him, and who has money enough to raise an action, may inflict a heavy punishment on the writer. He sarcastically characterized the formality of a trial as a mockery, when founded on such doctrines; as, the very fact of a man being at the expense of prosecuting is of itself the best evidence of his feelings being hurt.§ All taxes on knowledge he considered injuries to the welfare of a state, as an impediment thrown —generally designedly— in the way of national improvement.‖

SECTION VIII.

INTERNATIONAL LAW.

All that Bentham wrote on this subject, is comprised within a comparatively small compass;** but it would be unpardonable to omit all mention of a science which he was the means of revolutionizing, and which, previously to his taking it in hand, had not even received a proper distinctive name. No work, bearing separately on this subject,

* See Works, vol. viii. p. 417.
† Ibid. vol. viii. p. 583.
‡ Ibid. vol. ii. p. 275 *et seq.*; v. 97 *et seq.*; viii. 560 *et seq.*; ix. 53 *et seq.*
§ Ibid. vol. i. p. 574 *et seq.*; v. 97 *et seq.*
‖ Ibid. vol. ix. p. 451.
** Ibid. vol. ii. p. 535-560. See the subject casually introduced, vol. iii. pp. 200, 611; ix. 53, 282.

written by Bentham, was published during his lifetime, and his "Principles of International Law" made their first appearance in the collected edition. From observations here and there scattered through his works, his opinions on the subject might be gathered; but it was almost solely in the great article by Mr Mill on the "Law of Nations" in the Encyclopædia Britannica, that the public could find a distinct account of the utilitarian theory of International law.

It was necessary to establish a distinction between International laws, and laws calculated for internal government, which had not been distinctly drawn in the previous works on the subject. The internal laws of a country have always a superordinate authority to enforce them when any dispute regarding them takes place among the inhabitants; but when nations fall into disputes there is no such superordinate impartial authority to bind them to conformity with any fixed rules: whether the community of civilized nations, may hereafter be able to establish such a tribunal is a separate question. It hence arises that, in the internal laws of a state, there is always an approach more or less near to a uniformity of decision in disputed cases, and that the decisions may be referred to as precedents for future action. In disputes between nations, however, the decisions, if they may be called so, are more properly the victories of the stronger party, and are precedents to be followed by those who are able to imitate them, and to be submitted to by those who must submit. Hence a reference to precedent, as the foundation of International law, must be fallacious, and no principles founded on it can be just.

What had been done, being quite useless as a guide in this department, it was maintained that the way to serve mankind in any view that could be taken of the subject was, by showing what ought to be done. The question intervenes—what is the use of showing what ought to be done, when it is admitted that there is no authority capable of doing it, and that we must leave it in the hands which we charge with having already abused it—those of the stronger party in each dispute? The answer is, that though there be no distinct official authority capable of enforcing right principles of International law, there is a power bearing with more or less influence on the conduct of all nations, as of all individuals, however transcendently potent they may be—this is the power of public opinion; and it is to the end of directing this power rightly, that rules of International law should be framed.

The power in question has, it is true, various degrees of influence. The strong are better able to put it at defiance than the weak. Countries which, being the most populous, are likely also to be the strongest, carry a certain support of public opinion with all their acts, whatever they may be. But still it is the only power that can be moved to good purposes in this case; and, however high some may appear to be above it, there are, in reality, none who are not more or less subject to its influence. The conquerors who have nearly annihilated their enemies, are far from being exempt from the judgment of the public-opinion tribunal, regarding the extent to which, while victorious, they have exercised the virtues of generosity and humanity.

Bentham was opposed to war, as he was to every practice that brought with it destruction and misery; but he held that there were circumstances which might justify it as a choice of evils. He thought there were occasions on which a display of energy was essential to peace and security; and that those theorists who eschewed war as "unlawful," were fre-

quently only saved from a series of oppressions which would form a dangerous precedent against all peaceably-inclined communities, by the exertions of the bolder spirits with whom they were mingled.* The wars commonly called "glorious"—the wholesale murder of human beings, on no better impulse than the lust of power and the gratification of vanity, he denounced with all the indignation of his ardent nature. His views of the right principles on which the sword should be drawn, involved a self sacrifice, founded on a conscientious and serious calculation of results. His just national wars were a deliberate and well-weighed resignation of present luxuries and advantages, to obtain some end good for the community, and good for mankind; to obtain relief from the demoralising and degrading influence of servitude; or to help a weak nation struggling with a powerful.

Thus, judging that there were circumstances which would justify declarations of war, he appealed to the tribunal of public opinion regarding the method of conducting hostilities towards the desired end, with the smallest infringement of the Greatest-happiness principle. On this principle, no evil act should be done to an enemy, unless it will produce a proportional amount of benefit to the side effecting it. The vicissitudes of war afford many opportunities for a choice of operations, in which a benevolent mind will be able to accomplish as much for his own country as a malevolent, without the same sacrifice of life and property. It will be a ruling principle to strike at the government instead of the people. The disablement of the former is sure to produce the end aimed at, and may occasion a comparatively small amount of misery. When a government is weakened through attacks on the people, the operation is performed in the most cruel manner in which it can be accomplished. There can seldom be much good done by destroying the food and clothing of the people, or by appropriating such necessaries, unless they are wanted for the invading army: and the effect to be produced on a contest by such heartless acts, can seldom enter into comparison with the efficacy of a seizure of warlike stores. The one must always be productive of cruelty; the other may, in the end, serve the purposes of humanity, by terminating the contest. Here, as in private ethics, self-regarding prudence goes hand in hand with effective benevolence. There are none against whom the flame of human passion burns more fiercely and enduringly than those who, forgetting the humanity of the man, and the heroism of the soldier, have marked their progress through a hostile territory, by smoking hamlets, devastated fields, and homeless orphans.

As there are mischiefs to be abstained from in war, there are services for nations to perform to each other in time of peace. They should afford all facilities for commercial intercourse between their own and other nations, and between those foreign states which may have occasion to use their territory as a highway. The civilized part of the world is coming, day by day, nearer to just principles of international intercourse. France affording a highway for our communication with our great oriental empire, and conveying through its government-telegraph the earliest news

* "In *defensive* force the principle is, no doubt, involved, that attack may be remotely necessary to *defence*. *Defence* is a fair ground for war. The Quaker's objection cannot stand. What a fine thing it would have been for Buonaparte to have had to do with Quaker nations!"—Vol. x. p. 581.

of our operations in the east, is a symptom of progress which it would have afforded Bentham the liveliest gratification to witness. Nations should afford each other every reasonable assistance in the enforcement of the law of private rights belonging to each. A community of nations, bound to give assistance to each other's *political* laws, would be a most dangerous alliance ; it would be too apt to become a combination of monarchs for the support of despotism. In agreeing, however, to make parties who seek refuge within its territory amenable to the private laws of the country they have fled from, whether they have attempted to escape from a civil obligation, or from the punishment of a crime, each nation confers a benefit on every other, and, by the reciprocity, a benefit on itself. When nations are better accustomed to the performance of these services to each other, and when free trade has brought them within the circumference of common interests, they will daily find more inducements to preserve the blessings of peace, and fewer causes of irritation urging them to war.

SECTION IX.

POLITICAL ECONOMY.

Like all the later writers on the subject of Political Economy, Bentham acknowledged Adam Smith as his master ; and he professed only to analyze some of those departments which the founder of the science had not examined, or in relation to which he had adopted views inconsistent with the great principles of his own system.

The chief service which Bentham has done to this science, has been in the application of his exhaustive system to the carrying out, to their full extent, the doctrines of FREE TRADE. As in every other subject, he applied to this the criterion of the Greatest-happiness principle, and its bearing on legislation. Political Economy, if it were to be looked upon as an art, he conceived to be the art of supplying mankind at large with the greatest possible quantity of the produce of industry, and of distributing it in the manner most conducive to the wellbeing of humanity. When he asked what legislation ought to do towards the accomplishment of these ends, the answer was—Let it leave each man to do what seems best to himself. The wealth of individuals is the wealth of the community ; and each man is the best architect of his own fortunes. The preservation of security is all that Political Economy looks to from the legislature—security for wealth created—security for the exercise of ingenuity and industry in creating more—security for enforcing the performance of contracts.*

This, its essential and simple duty, the legislature was found to be neglecting, while it was occupied in making abortive attempts to perform the unperformable task of increasing productiveness or decreasing consumption. It denied to the creditor, what it might so easily have given him—facilities for immediate access to the funds of the dishonest

* See Works, vol. ii. p. 1-103. See also vol. i. p. 302 ; ii. 269 ; ix. 11.

or obstinate debtor. The debtor might be deprived of his liberty on the oath of any ruffian, and his creditor might make him a slave for life; but there was no middle course where justice could meet humanity—where the unfortunate might be spared the punishment due only to a felon, and the fraudulent might be deprived of the means of defying the law. This state of matters has been much improved in the course of modern Legislation. It cannot be denied that these improvements are in a great measure owing to the writings of Bentham,* and they are respectively additions to that security which, in his opinion, was all that Political Economy demanded of the Law.

Though it cannot, however, frame laws for directly increasing or preserving the wealth of the community, legislation may do much to enable the individual members to do these things rightly for themselves. Its chief means of accomplishing this is Education. On the effect of intelligence in increasing individual, and thence national production, it is quite unnecessary to enlarge. It gives the engineer the means of inventing, and properly applying machinery. It gives the merchant the means of knowing the most profitable markets. It gives the labourer the means of knowing where his labour is most valued, and enables him, when he finds the trade he is occupied in, falling, or becoming overstocked, to turn his hand to another. In short, in all circumstances, skill, the fruit of education, gives the producer the means of increasing the value of his produce to his own benefit, and to that of the community. (See above, p. 392.)

Rewards, for exhibitions of skill or genius in arts and manufactures, are aids to the operation of education: they serve to create emulation, and to open and improve the faculties. On the most judicious means of adapting these rewards to their ends, he wrote a considerable quantity of remarks and elucidations. He thought the most ingeniously-devised source of reward, was that of giving a monopoly, in the use of an invention, to the inventor, for some limited time—the Patent system. A passage explanatory of his views on this subject will be found above, (p. 168-169.)

Bentham found one important element, in relation to which Adam Smith had lost hold of the pure principles of free trade. The father of political economy had not succeeded in so completely clearing the nature of money of its adventitious and popular acceptations, as to be able to treat it like an ordinary commodity, subject to the common rules of trade. Hence he supported the Usury laws, which are essentially a restriction of free trade in money. As an exposition of this fallacy, Bentham wrote his "Defence of Usury."† It has often been remarked that this title is not a descriptive one—the work is no more a defence of usury than it is a defence of high prices. It merely proves the folly and mischievousness of any attempt to fix the price that should be paid for the use of money. It will be unnecessary to make any analysis of arguments which have now been seconded by the almost entire abolition of the Usury laws.

Bentham's other works on Political Economy are chiefly occupied in the exposure of the fallacy of those artificial efforts which legislation makes to increase the country's wealth. One of the most prominent

* See Works, vol. i. p. 546; iii. 428; v. 533; vi. 135, 176, 180; vii. 331.
† Commencement of vol. iii. of the Works.

and extravagant of these he found to be colonies ; and in some of the foregoing extracts, his views of the costliness of the British Colonial System will be found pretty fully explained, (p. 171-176.)

Colonization is not without its advantages, though few of them fall to the share of the mother country. It may be the means of removing the damaged part of a population, through a system of emigration. It is only, however, in peculiar circumstances that it will not be a very extravagant means of accomplishing this end. If there is another country which will absorb our damaged* population, the support of colonies for the purpose, is just paying for what may be got for nothing. Colonization may be the means of spreading the blessings of civilisation among savage tribes : here there is a palpable advantage to those tribes themselves, and to the world at large ; but it is obtained at a sacrifice on the part of the mother country. It will sometimes occur, that the possession of fortified places abroad is serviceable for the protection of the free commerce of a nation ; but this is a benefit of rare occurrence, and is very often supposed to be obtained when it is not.

The science of Political Economy has made so much progress, especially in the department of free trade, since the date of Bentham's writings on the subject, that it will hardly be of service to analyze his arguments against Monopolies, Prohibitions, Restrictions, and Bounties.†

* The term "surplus population" is generally employed in relation to emigration ; but this implies an application of the system too wide to be practicable. Population never can be too great when there is employment for all ; and no nation could afford to carry off the numbers annually added to a population which, by such removals, has free room to grow. All who can be removed by any practicable system are immediately replaced ; and, before any advantage can be had by the removal, it must be shown that, by some improvement in the institutions and habits of the country, the unproductive individuals removed are to be replaced by productive. The committee of the House of Commons, of 1841, on emigration from the Highlands, with great caution, recommended that no money for the purpose should be advanced by Government, until there was some security, in an amendment of the Scottish Poor Law, that a similar unproductive population should not succeed to those so removed.

† Probably the only department of Political Economy in which Bentham is behind the knowledge of the present age, (his works on this science were almost all written in the 18th century,) is in his views of the incidence of machinery on the wages of labour. Taking the direct advantages of machinery on the one side—cheapness of production, and the command of foreign markets arising out of that cheapness—he deducted from these the loss to labour, (vol. iii. pp. 39, 67-68.) He had forgotten to keep in view, that of the capital exhausted on hand-made and that on machine-made produce, it is not a necessary fact that a less proportion of the latter should go in the form of wages of labour than of the former. In the case, for instance, of a certain capital spent on the production of stockings, if they are hand-knit, the wages go to the knitter ; while, if they be machine-made, the wages go to the miner, the smelter, the machine-maker, &c. The elements of the prices of commodities are, rent of land, on which the raw material is produced—wages of labour—and profits of stock. These elements will vary in their proportions, according to incidental circumstances ; but it does not follow that they will be necessarily different in the case of hand-produce, from what they are in the case of machine-produce. Another discovery of modern science in this department, which seems not to have been anticipated by Bentham, is, the fallacy as to the influence of the Sinking Fund, so clearly exposed by Dr Robert Hamilton in his work on the National Debt.

As some of his opinions on these subjects, however, are laid down with remarkable clearness and precision, some passages in which they appear are given above, (p. 170, *et seq.*)

The reader who takes an interest in financial projects will find much to engage his attention in the plan for converting stock into Annuity notes.* The project is an improvement on the Exchequer Bill system. It invites Government to come into the field in opposition to the private banks, with the advantage in its favour of allowing interest on its paper securities. The notes are to be of various amounts. They are to carry interest daily from the day of issue, and are each to have a table by which its value in interest added to capital may be ascertained on any given day. The Author was of opinion that these notes would be used as cash, as of their value on each day according to the table.

SECTION X.

LOGIC AND METAPHYSICS.†

Bentham did not draw a line of distinction between these sciences; and he seems to have considered the terms almost convertible. It follows that he did not treat the subject of Logic, as it has generally been done, particularly by late writers, as a formal science,‡ teaching the laws of thought, as distinct from those sciences which treat of the matter of thought. How far he would have continued his mixture of the two subjects, after he had made some approach to completeness in his examination of the various departments of mental philosophy, it is difficult to say. He seems to have projected at one time a full and searching inquiry into all the qualities and operations of the human mind, including an investigation not only of the laws of thought, but of the materials on which they work. To this end, he more than once set himself down to examine and classify the powers of the mind. He exhibited an intention of pursuing the examination of mental operations with a comprehensive, and, at the same time, most minute anatomy. To this purpose, he divided and subdivided the materials of thought; and being brought by his subdivisions into an analysis of the matter of language and grammar, left, in his fragments on these two subjects, specimens of the minuteness with which he intended to go over the whole field.

His notion of Logic was, that it was the means of getting at the truth, in relation to all departments of human knowledge;§ and that it thus was, to use his own expression, the schoolmistress of all the other arts and sciences.‖ It would seem, then, to be included in his view of the subject, that any system of Logic, which left the student ignorant of the

* Works, vol. iii. p. 105 *et seq.*

† The Works referred to in this Section are those in vol. viii. down to p. 357. See also vol. iii. p. 285 *et seq.*

‡ The single word science is here used, for the sake of brevity, though Bentham, like Whately, considered that Logic was both a Science and an Art.

§ Works, vol. viii. pp. 220, 222. ‖ Ibid. p. 76.

means of ascertaining the truth in regard to any one element of human knowledge, was an imperfect system. If Logic be considered as divided into the Analytic and Dialectic branches, the latter half of the subject was entirely rejected by Bentham ; for, viewing dialectics in its original signification of the art of debating, he considered it as an instrument of deception rather than of truth—as a system of rules for enabling the more adroit disputant to defeat the less able. If, however, Logic be divided into the Analytic branch and the Synthetic,* he has left behind him traces of his labours in both departments : in the former examining the phenomena which the mind exhibits in the process of acquiring truth ; in the latter, constructing instruments to facilitate its discovery.

Perhaps the most remarkable and original feature of the analytic portion of the fragments, is the division of all nouns-substantive into names of Real, and names of Fictitious entities ; a distinction which he follows out with his usual clearness and consistency, and of which he never, in any of his works, loses sight. If this classification in some measure resemble Aristotle's division into Primary and Secondary substances, it will be found, on examination, to have a much more comprehensive influence, and, from the manner in which its author employs it, to have a much more important application to the arrangement of the elements of thought. Nouns expressing real entities are names of things of which we predicate the actual existence—such as a ball, a wheel, an impression on the mind, &c. Nouns expressive of fictitious entities, are, all those nouns which do not express such actual existences. The distinction seems to be a pretty obvious one ; but the uses which its author makes of it are novel and important. In our phraseology as to fictitious entities, we borrow the forms of words which have been invented for explaining the phenomena of real entities ; and we cannot speak of the former without the actual use, or think of them without the mental use, of these forms of words. Thus *motion* is a fictitious entity. We talk of motion being *in* a thing, or of a thing being *in* motion ; and in using the preposition *in*, we borrow a word which was invented to be used upon physical matter. *Relation* is a fictitious entity : one thing is said to *have* a relation to another, and in this word *have* we are obliged to borrow a word constructed for the purpose of intimating corporeal possession. The method in which I *have* my pen, and the method in which logic may *have* a relation to metaphysics, are two very different ideas ; but we cannot express the latter without borrowing the use of those words which were constructed to represent the former. Hence, fictitious entities cannot appear in language, our instrument of thought, except through the use of borrowed words. They have no phraseology of their own, and can

* Bentham would not himself have admitted the use of the terms Analysis and Synthesis with this popular acceptation. In a very curious note, (vol. viii. p. 75,) he has shown that the same elements separated in analysis are never the same that are put together in synthesis. The pieces, if they may be so called, with which the process of synthesis is performed, are not the same which result from the process of analysis. "The subject analysed is an aggregate or *genus*, which is divided into *species*, those into *sub-species*, and so on. The only case in which *synthesis* is exactly opposite and correspondent to, and no more than coextensive with analysis, is, when between the ideas put together there is that sort of conformity from which the act of putting them together receives the name of *generalization*."

have none. Whether they have separate existence or not is a question we have not data for determining: to our minds they are so unreal, that we cannot think of them without clothing them for the time-being in the words which are invented for thinking of real entities.* How far a pursuit of this subject would throw light on the old dispute of the Realists and Materialists—how far misapprehension as to the actual subject of discussion may have arisen from this necessity of borrowing the phraseology of real entities, for the purpose of discussing fictitious entities, is an inquiry on which the present writer cannot venture.

The next feature prominently demanding attention in the logical tracts, is the instrument which their Author used for analyzing and laying out his subjects—his exhaustive method of division, on the Dichotomous or Bifurcate plan. He took the hint of this system from the old editions of the Isagoge of Porphyry, in which there is a diagram exhibiting an exemplification of it, commonly attributed to the inventive genius of Porphyry himself, but probably the work of an editor. The dichotomous mode of division is frequently alluded to in the writings of the Aristotelian logicians, and it received considerable attention from Ramus; but it was, like many other instruments of discovery, a mere plaything for the intellect, until it fell into the hands of a man who was able to adapt it to practical service. The Porphyrian tree represents as the centre or trunk a *genus generalissimum*, from which successive branches issuing carry off some separable quality, until it has gone through as many processes of division as can be applied to it, and leaves in the two last condividends the two most concrete entities which can be comprehended within the general term.

The service which Bentham derived from the study of this diagram, was in its leading him to the conclusion that the only species of division which in its very terms bears to be exhaustive, is a division into two. It may happen that any other division—such as that of the works of nature into the animal, vegetable, and mineral kingdoms, may turn out to be exhaustive: but the object is to find a formula the use of which of itself secures exhaustiveness.

It is only by a division into two parts that logical definition *per genus et differentiam* can be accomplished. The species is marked off by its possessing the quality of the genus, and some differential quality which separates it from the other species of that genus. It is only by the expression of a difference as between two, that thought and language enable us to say whether the elements of the thing divided are exhausted in the condividends. We can only compare two things together—we cannot compare three or more at one time. In common language we do speak of comparing together more things than two; but the operation by which we accomplish this end is compound, consisting of deductions drawn from a series of comparisons, each relating to only two things at a time. Comparison is the estimate of differences; and language, by giving us the word "between," as that by which we take the estimate, shows that we can only operate on two things at a time. Thus, if we have a division of an aggregate into three, we cannot give such a nomenclature to these three elements as will show that they exhaust the aggregate. If we say law is divided into penal and non-penal, we feel certain, in the very form of

* See Works, vol. viii. pp. 119, 126, 195 *et seq.*, 263.

the statement, that we include every sort of law under one or other of these designations; but if we say that law is divided into real, personal, and penal, we cannot be, in the same manner, sure that we include every kind of law. If we wish to proceed farther in the division, and, after dividing the law into penal and non-penal, say the non-penal is divided into that which affects persons and that which does not affect persons, we are sure still to be exhaustive; and this system we can continue with the same certainty *ad infinitum*.

The system is undoubtedly a laborious and a tedious one, when the subject is large, and the examination minute. The exemplifications which the Author has given in his tables are the produce of great labour, and cover but a limited extent of subject. It was more as a test of the accuracy of the analysis made by the *mind* when proceeding with its ordinary abbreviated operations, than as an instrument to be actually used on all occasions, that the Author adopted the bifurcate system. As a means of using it with the more clearness and certainty, he recommended the adaptation to it of the Contradictory formula—viz., the use of a positive affirmation of a quality in one of the condividends, and the employment of the correspondent negative in the other. The value of this test, as applicable to any description of argumentative statement, is, in its bringing out intended contrasts with clearness and certainty. It is not necessary that the Differential formula should be actually employed. In its constant use there would be an end to all freedom and variety in style. But it is highly useful, to take the statement to pieces, and try whether its various propositions contain within them the essence of the bifurcate system and the formula; in other words, to see that when differences are explained, or contrasts made, they be clearly applied to only two things at a time, and that the phraseology, instead of implying vague elements of difference, explains distinctly what the one thing has, and what the other has not.*

* For an account of the Bifurcate system, see Works, vol. viii. pp. 95, 103, 107, 110, 114, 253.

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